

TABLE OF CONTENTS

Chapter 1

PROGRAM OVERVIEW AND PLAN

1-I.A.	THE OVERVIEW	1-1
--------	--------------------	-----

PART I: THE HHA

1-I.B.	ORGANIZATION AND STRUCTURE OF THE HHA.....	1-1
1-I.C.	HHA MISSION.....	1-2
1-I.D.	THE HHA'S PROGRAMS.....	1-2
1-I.E.	THE HHA'S COMMITMENT TO ETHICS AND SERVICE....	1-2

PART II. THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

1-II.A.	OVERVIEW AND HISTORY OF THE PROGRAM.....	1-3
1-II.B.	HCV PROGRAM BASICS.....	1-5
1-II.C.	THE HCV PARTNERSHIPS.....	1-5
1-II.D.	APPLICABLE REGULATIONS.....	1-9

PART III. THE HCV ADMINISTRATION PLAN

1-III.A.	OVERVIEW AND PURPOSE OF THE PLAN.....	1-9
1-III.B.	CONTENTS OF THE PLAN (24CFR982.54).....	1-9
1-III.C.	ORGANIZATION OF THE PLAN.....	1-11
1-III.D.	UPDATING AND REVISING THE PLAN.....	1-11

Chapter 2

FAIR HOUSING AND EQUAL OPPORTUNITY

PART I: NONDISCRIMINATION

2-1.A.	OVERVIEW.....	2-1
2-1.B.	NONDISCRIMINATION.....	2-2

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A.	OVERVIEW.....	2-3
2-II.B.	DEFINITION OF REASONABLE ACCOMMODATION.....	2-4
2-II.C.	REQUEST FOR AN ACCOMMODATION.....	2-5
2-II.D.	VERIFICATION OF DISABILITY.....	2-5
2-II.E.	APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION.....	2-6
2-II.F.	PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS.....	2-7
2-II.G.	PHYSICAL ACCESSIBILITY.....	2-7
2-II.H.	DENIAL OR TERMINATION OF ASSISTANCE.....	2-8

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

2-III.A.	OVERVIEW.....	2-9
2-III.B.	ORAL INTERPRETATION.....	2-9
2-III.C.	WRITTEN TRANSLATION.....	2-10
2-III.D.	IMPLEMENTATION PLAN.....	2-10

EXHIBIT 2-I:	DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS (24 CFR PARTS 8.3 AND 100.201).....	2-11
--------------	---	------

Chapter 3

ELIGIBILITY

INTRODUCTION.....	3-1
3-I.A. OVERVIEW.....	3-2
3-I.B. FAMILY AND HOUSEHOLD (24 CFR 982.201 (c), HUD-50058 IB, p. 13).....	3-2
3-I.C. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY.....	3-3
3-I.D. HEAD OF HOUSEHOLD (24 CFR 5.504(b)).....	3-4
3-I.E. SPOUSE, COHEAD, AND OTHER ADULT.....	3-4
3-I.F. DEPENDENT (24 CFR 5.603).....	3-4
3-I.G. FULL-TIME STUDENT (24 CFR 5.603, HCV GB p. 5-29).....	3-5
3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [24 CFR 5.100 AND 5.403].....	3-5
3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403].....	3-5
3-I.J. GUESTS [24 CFR 5.100].....	3-6
3-I.K. FOSTER CHILDREN AND FOSTER ADULTS.....	3-6
3-I.L. ABSENT FAMILY MEMBERS.....	3-7
3-I.M. LIVE-IN AIDE.....	3-8
 PART II: BASIC ELIGIBILITY CRITERIA	
3-II.A. INCOME ELIGIBILITY AND TARGETING.....	3-9
3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, SUBPART E].....	3-10
3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 AND 5.218].....	3-12
3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230, HCV GB, p.5-12].....	3-13
 PART III: DENIAL OF ASSISTANCE	
3-III.A. OVERVIEW.....	3-13
3-III.B. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.204(b)].....	3-14
3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE.....	3-15
3-III.D. SCREENING.....	3-18
3-III.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE.....	3-20
3-III.F. NOTICE OF ELIGIBILITY OR DENIAL.....	3-22
EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES.	3-22

CHAPTER 4

APPLICATIONS, WAITING LIST AND TENANT SELECTION

PART I: THE APPLICATION PROCESS

4-I.A.	OVERVIEW.....	4-2
4-I.B.	APPLYING FOR ASSISTANCE [HCV GB, pp.4-11-4-16].....	4-2
4-I.C.	ACCESSIBILITY OF THE APPLICATION PROCESS.....	4-2
4-I.D.	PLACEMENT ON THE WAITING LIST.....	4-3

PART II: MANAGING THE WAITING LIST

4-II.A.	OVERVIEW.....	4-3
4-II.B.	ORGANIZATION OF THE WAITING LIST [24 CFR 982.204 AND 205].....	4-4
4-II.C.	OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206].....	4-4
4-II.D.	FAMILY OUTREACH [HCV GV, pp.4-2 TO 4-4].....	4-5
4-II.E.	REPORTING CHANGES IN FAMILY CIRCUMSTANCES....	4-6
4-II.F.	UPDATING THE WAITING LIST [24 CFR 982.204].....	4-6

PART III. SELECTION FOR HCV ASSISTANCE

4-III.A.	OVERVIEW.....	4-7
4-III.B.	SELECTION AND HCV FUNDING SOURCES.....	4-8
4-III.C.	SELECTION METHOD.....	4-8
4-III.D.	NOTIFICATION OF SELECTION.....	4-14
4-III.E.	THE APPLICATION INTERVIEW.....	4-14
4-III.F.	COMPLETING THE APPLICATION PROCESS.....	4-15

CHAPTER 5

BRIEFINGS AND VOUCHER ISSUANCE

PART I: BRIEFINGS AND FAMILY OBLIGATIONS

5-I.A.	OVERVIEW.....	5-1
5-I.B.	BRIEFING [24 CFR 982.301].....	5-1
5-I.C.	FAMILY OBLIGATIONS.....	5-4

PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE

5-II.A.	OVERVIEW.....	5-7
5-II.B.	DETERMINING FAMILY UNIT (VOUCHER) SIZE [24 CFR 982.402].....	5-7
5-II.C.	EXECEPTIONS TO SUBSIDY STANDARDS.....	5-8
5-II.D.	VOUCHER ISSUANCE [24 CFR 982.302].....	5-9
5-II.E.	VOUCHER TERM, EXTENSIONS, AND SUSPENSIONS.....	5-10

CHAPTER 6

INCOME AND SUBSIDY DETERMINATIONS

[24 CFR PART 5, SUBPARTS E AND F; 24 CFR 982]

PART I: ANNUAL INCOME

6-I.A.	OVERVIEW	
6-I.B.	HOUSEHOLD COMPOSITIONS AND INCOME.....	6-2
6-I.C.	ANTICIPATING ANNUAL INCOME.....	6-5
6-I.D.	EARNED INCOME.....	6-8
6-I.E.	EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617].....	6-10
6-I.F.	BUSINESS INCOME [24 CFR 5.609(b)(2)].....	6-12
6-I.G.	ASSETS [24 CFR 5.609 (b)(3) and 24 CFR 5.603 (b)].....	6-14
6-I.H.	PERIODIC PAYMENTS.....	6-21
6-I.I.	PAYMENTS IN LIEU OF EARNINGS.....	6-22
6-I.J.	WELFARE ASSISTANCE.....	6-23
6-I.K.	PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)].....	6-24
6-I.L.	ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME.....	6-25

PART II: ADJUSTED INCOME

6-II.A.	INTRODUCTION.....	6-27
6-II.B.	DEPENDENT DEDUCTION.....	6-28
6-II.C.	ELDERLY OR DISABLED DEDUCTION.....	6-28
6-II.D.	MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(b)(3)(i)]....	6-28
6-II.E.	DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)].....	6-29
6-II.F.	CHILD CARE EXPENSES DEDUCTION.....	6-31

PART III: CALCULATING FAMILY SHARE AND HHA SUBSIDY

6-III.A.	OVERVIEW OF RENT AND SUBSIDY CALCULATIONS.....	6-34
6-III.B.	FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630].....	6-35
6-III.C.	APPLYING PAYMENT STANDARDS [24 CFR 982.505].....	6-38
6-III.D.	APPLYING UTILITY ALLOWANCES [24 CFR 982.517].....	6-40
6-III.E.	PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520].....	6-41
EXHIBIT 6-1:	ANNUAL INCOME INCLUSIONS 24 CFR 5.609.....	6-42
EXHIBIT 6-2:	ANNUAL INCOME INCLUSIONS.....	6-45
EXHIBIT 6-3:	TREATMENT OF FAMILY ASSETS.....	6-48
EXHIBIT 6-4:	EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES.....	6-49

CHAPTER 7

VERIFICATION

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

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].....	7-1
7-I.B.	OVERVIEW OF VERIFICATION REQUIRMENTS.....	7-2
7-I.C.	ENTERPRISE INCOME VERIFICATION (EIV).....	7-3
7-I.D.	THIRD-PARTY WRITTEN AND ORAL VERIFICATION.....	7-6
7-I.E.	REVIEW OF DOCUMENTS.....	7-7
7-I.F.	SELF-CERTIFICATION.....	7-8

PART II. VERIFYING FAMILY INFORMATION

7-II.A.	VERIFICATION OF LEGAL IDENTITY.....	7-8
7-II.B.	SOCIAL SECURITY NUMBERS [24 CFR 5.216 AND HCV GB, p. 5-12].....	7-9
7-II.C.	DOCUMENTATION OF AGE.....	7-10
7-II.D.	FAMILY RELATIONSHIPS.....	7-10
7-II.E.	VERIFICATION OF STUDENT STATUS.....	7-11
7-II.F.	DOCUMENTATION OF DISABILITY.....	7-12
7-II.G.	CITIZENSHIP OR ELIGIBLE IMMIGARION STATUS [24 CFR 5.508].....	7-13
7-II.H.	VERIFICATION OF PREFERENCE STATUS.....	7-14

PART III. VERIFYING INCOME AND ASSETS

7-III.A.	EARNED INCOME.....	7-14
7-III.B.	BUSINESS AND SELF-EMPLOYMENT INCOME.....	7-15
7-III.C.	PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS	7-15
7-III.D.	ALIMONY OR CHILD SUPPORT.....	7-16
7-III.E.	ASSETS AND INCOME FROM ASSETS.....	7-17
7-III.F.	NET INCOME FROM RENTAL PROPERTY.....	7-17
7-III.G.	RETIREMENT ACCOUNTS.....	7-18
7-III.H.	INCOME FROM EXCLUDED SOURCES.....	7-18
7-III.I.	ZERO ANNUAL INCOME STATUS.....	7-18

PART IV. VERIFYING MANDATORY DEDUCTIONS

7-IV.A.	DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS.....	7-19
---------	---	------

7-IV.B.	MEDICAL EXPENSE DEDUCTION.....	7-19
7-IV.C.	DISABILITY ASSISTANCE EXPENSES.....	7-21
7-IV.D.	CHILD CARE EXPENSES.....	7-22

EXHIBIT 7-1:	EXCERPT FROM HUD VERIFICATIONS GUIDANCE NOTICE (PIH 2004-01, pp.11-14).....	7-25
--------------	--	------

EXHIBIT 7-2:	SUMMARY OF DOCUMENTATION REQUIREMENTS FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10].....	7-29
--------------	--	------

CHAPTER 8

HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 SUBPART I AND 24 CFR 982.507]

PART I: PHYSICAL STANDARDS

8-I.A.	GENERAL HUD REQUIREMENTS.....	8-1
8-I.B.	ADDITIONAL LOCAL REQUIREMENTS.....	8-3
8-I.C.	LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]...	8-5
8-I.D.	OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404].....	8-5
8-I.E.	SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225].....	8-6
8-I.F.	VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]	8-6

PART II: THE INSPECTION PROCESS

8-II.A.	OVERVIEW [24 CFR 982.405].....	8-7
8-II.B.	INITIAL HQS INSPECTION [24 CFR 982.401 (a)].....	8-8
8-II.C.	ANNUAL HQS INSPECTIONS [24 CFR 982.405(a)].....	8-10
8-II.D.	SPECIAL INSPECTIONS [HCV GV p. 10-30].....	8-10
8-II.E.	QUALITY CONTROL INSPECTIONS [24 CFR 982.405 (b), HCV GB p. 10-32].....	8-11
8-II.F.	INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT.....	8-12
8-II.G.	ENFORCING OWNER COMPLIANCE.....	8-13
8-II.H.	ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)].....	8-14

PART III. RENT REASONABLENESS [24 CFR 982.507]

8-III.A.	OVERVIEW.....	8-15
8-III.B.	WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED.....	8-15
8-III.C.	HOW COMPARABILITY IS ESTABLISHED.....	8-16
8-III.D.	HHA RENT REASONABLENESS METHODOLOGY.....	8-17
EXHIBIT 8-I:	OVERVIEW OF HUD HOUSING QUALITY STANDARDS...	8-19
EXHIBIT 8-II:	SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY.....	8-21

CHAPTER 9

GENERAL LEASING POLICIES

9-I.A.	TENANT SCREENING.....	9-1
9-I.B.	REQUESTING TENANCY APPROVAL [FORM HUD-52517]	9-2
9-I.C.	OWNER PARTICIPATION.....	9-3
9-I.D.	ELIGIBLE UNITS.....	9-3
9-I.E.	LEASE AND TENANCY ADDENDUM.....	9-7
9-I.F.	TENANCY APPROVAL [24 CFR 982.305].....	9-11
9-I.G.	HAP CONTRACT EXECUTION [24 CFR 982.305].....	9-12
9-I.H.	CHANGES IN LEASE OR RENT [24 CFR 982.308].....	9-13

CHAPTER 10

MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

PART I: MOVING WITH CONTINUED ASSISTANCE

10-I.A.	ALLOWABLE MOVES.....	10-1
10-I.B.	RESTRICTIONS ON MOVES.....	10-2
10-I.C.	MOVING PROCESS.....	10-3

PART II: PORTABILITY

10-II.A.	OVERVIEW.....	10-4
10-II.B.	INITIAL PHA ROLE.....	10-5
10-II.C.	RECEIVING PHA ROLE.....	10-10

CHAPTER 11

REEXAMINATIONS

PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]

11-I.A.	OVERVIEW.....	11-1
11-I.B.	SCHEDULING ANNUAL REEXAMINATIONS.....	11-1
11-I.C.	CONDUCTING ANNUAL REEXAMINATIONS.....	11-2
11-I.D.	EFFECTIVE DATES.....	11-3

PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]

11-II.A.	OVERVIEW.....	11-4
11-II.B.	CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION	11-5
11-II.C.	CHANGES AFFECTING INCOME OR EXPENSES.....	11-6
11-II.D.	PROCESSING THE INTERIM REEXAMINATION.....	11-8

PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

11-III.A.	OVERVIEW.....	11-9
11-III.B.	CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES.....	11-9
11-III.C.	NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT.....	11-10
11-III.D.	DISCREPANCIES.....	11-11

CHAPTER 12

TERMINATION OF ASSISTANCE AND TENANCY

PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

12-I.A.	OVERVIEW.....	12-1
12-I.B.	FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455].....	12-1
12-I.C.	FAMILY CHOOSES TO TERMINATE ASSISTANCE.....	12-2
12-I.D.	MANDATORY TERMINATION OF ASSISTANCE.....	12-2
12-I.E.	MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS	12-3

PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A.	OVERVIEW.....	12-7
12-II.B.	METHOD OF TERMINATION [24 CFR 982.552(a)(3)].....	12-7
12-II.C.	ALTERNATIVES TO TERMINATION OF ASSISTANCE.....	12-7
12-II.D.	CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE...	12-8
12-II.E.	TERMINATION NOTICE [HCV GV, p. 15-7].....	12-10
12-II.F.	HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE.....	12-11

PART III: TERMINATION OF TENANCY BY THE OWNER

12-III.A.	OVERVIEW.....	12-11
12-III.B.	GROUND FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310 AND FORM HUD-52641-A, TENANCY ADDENDUM].....	12-12
12-III.C.	EVICTION [24 CFR 982.310 (e) and (f) and Form HUD-52641-A, TENANCY ADDENDUM].....	12-13
12-III.D.	DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310 (h)].....	12-14
12-III.E.	EFFECT OF TERMINATION OF TENANCY ON THE FAMILY'S ASSISTANCE.....	12-15

EXHIBIT 12-1:	STATEMENT OF FAMILY OBLIGATIONS.....	12-15
EXHIBIT 12-2:	HELENA HOUSING AUTHORITY VIOLENCE AGAINST WOMEN ACT (VAWA) POLICY.....	12-18

CHAPTER 13

OWNERS

PART I. OWNERS IN THE HCV PROGRAM

12-I.A.	OWNER RECRUITEMENT AND RETENTION [HCV GV, pp.2-4 to 2-6].....	13-1
13-I.B.	BASIC HCV PROGRAM REQUIREMENTS.....	13-2
13-I.C.	OWNER RESPONSIBILITES [24 CFR 982.452].....	13-4
13-I.D.	OWNER QUALIFICATIONS.....	13-5
13-I.E.	NON-DISCRIMINATION [HAP CONTRACT- FORM HUD-52641].....	13-8

PART II.HAP CONTRACTS

13-II.A.	OVERVIEW.....	13-8
12-II.B.	HAP CONTRACT CONTENTS.....	13-8
13-II.C.	HAP CONTRACT PAYMENTS.....	13-10
13-II.D.	BREACH OF HAP CONTRACT [24 CFR 982.453].....	13-12
13-II.E.	HAP CONTRACT TERM AND TERMINATIONS.....	13-13
13-II.F.	CHANGE IN OWNERSHIP/ASSIGNMENT OF THE HAP CONTRACT [HUD-52641].....	13-14

CHAPTER 14

PROGRAM INTEGRITY

**PART I: PREVENTING, DETECTING, AND INVESTIGATING
ERRORS AND PROGRAM ABUSE**

14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE..... 14-1
14-I.B. DETECTING ERRORS, AND PROGRAM ABUSE..... 14-2
14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE..... 14-3

PART II: CORRECTIVE MEASURES AND PENALTIES

14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS..... 14-5
14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE.....14-5
14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE.....14-7
14-II.D. HHA-CAUSED ERRORS OR PROGRAM ABUSE..... 14-8
14-II.E. CRIMINAL PROSECUTION..... 14-10
14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES..... 14-11

CHAPTER 15

INFORMAL REVIEWS AND HEARINGS

15-I.A.	NOTICE OF RIGHTS.....	15-1
15-I.B.	CIRCUMSTANCES WHICH REQUIRE THE OFFER OF AN INFORMAL REVIEW OR HEARING.....	15-1
15-I.C.	TIMING OF INFORMAL HEARINGS.....	15-3
15-I.D.	INFORMAL REVIEW OR HEARING PROCESS.....	15-3

CHAPTER 16

HOMEOWNERSHIP OPTION

GENERAL DESCRIPTION AND INFORMATION.....	16-1
16-I.A. INITIAL REQUIREMENTS FOR FAMILIES.....	16-1
16-I.B. ELIGIBILITY REQUIREMENTS FOR THE	16-1
16-I.C. ELIGIBILITY CRITERIA FOR THE HOME.....	16-3
16-I.D. APPLICATION PROCESS.....	16-4
16-I.E. HOME SEARCH.....	16-4
16-I.F. SALES AGREEMENT.....	16-4
16-I.G. LENDING AND FINANCING PROCESS.....	16-5
16-I.H. DOCUMENTS REQUIREMENT FOR REVIEW AND APPROVAL FO HOME PURCHASE.....	16-6
16-I.I. COMPLIANCE WITH FAMILY OBLIGATIONS.....	16-6
16-I.J. AMOUNT OF ASSISTANCE.....	16-6
16-I.K. DETERMINING HOMEOWNERHSIP EXPENSES.....	16-7
16-I.L. PAYMENTS.....	16-7
16-I.M. PORTABILITY AND MOVES.....	16-7
16-I.N. MAXIMUM TERM OF ASSISTANCE.....	16-7
16-I.O. DENIAL OR TERMINATION OF ASSISTANCE.....	16-8

CHAPTER 17

FAMILY SELF SUFFICIENCY

OVERVIEW AND PURPOSE.....	17-1
FAMILY DEMOGRAPHICS.....	17-1

PART I. ESTIMATE OF PARTICIPANTS

17.I.A.	ELIGIBLE FAMILIES FROM OTHER SELF-SUFFICIENCY PROGRAMS.....	17-2
17.I.B.	SELECTION.....	17-2
17.I.C.	INCENTIVES TO ENCOURAGE.....	17-2
17.I.D.	OUTRACH EFFORTS.....	17-3

PART II.FSS SERVICES

17.II.A.	CASE MANAGEMENT PROCESS.....	17-4
17.II.B.	ESCROW ACCOUNT.....	17-4
17.II.C.	INTERIM ESCROW DISBURSEMENT.....	17-4
17.II.D.	FINAL ESCROW DISBURSEMENT.....	17-5

PART III. REVISIONS AND TERMINATION OF CONTRACT AND SERVICES

17-III.A.	ITSP REVISIONS.....	17-5
17-III.B.	CONTRACT EXTENSIONS.....	17-7
17-III.C.	GRIEVANCE/HEARING PROCEDURES.....	17-7
17-III.D.	ASSURANCE OF NON-INTERFERENCE WITH RIGHTS OF NON-PARTICIPATING.....	17-7

Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

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

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

There are three parts to this chapter:

Part I: The HHA. This part includes a description of the HHA, 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 HHA

1-I.A. OVERVIEW

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

1-I.B. ORGANIZATION AND STRUCTURE OF THE HHA

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the Helena Housing Authority (HHA), Montana for the jurisdiction defined as Helena, Montana, except as may further be approved by agreements with the Housing Authorities of those municipalities as provided under state and local law

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

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

The principal staff member of the HHA 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 the HHA's staff in order to manage the day-to-day operations of the HHA 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. HHA MISSION

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

HHA Policy

“Provide quality affordable housing for eligible neighbors in the Helena Community and promote opportunities to enhance life skills and personal achievement”.

1-I.D. THE HHA'S PROGRAMS

The following programs are included under this administrative plan:

HHA Policy

The HHA's Administrative Plan is applicable to the operation of the Housing Choice Voucher program.

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

As a public service agency, the HHA is committed to providing excellent service to HCV program participants – families and owners – in the community. The HHA'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 that maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.

- Promote a market-driven housing program that will help qualified low-income families be successful in obtaining affordable housing and increase the supply of housing choices for such families.
- Create positive public awareness and expand the level of family, owner, and community support in accomplishing the HHA's mission.
- Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.
- Administer an efficient, high-performing agency through continuous improvement of the HHA's support systems and commitment to our employees and their development.

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

PART II. THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

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

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

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

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

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

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

The Housing and Community Development (HCD) Act of 1987 authorized a new version of tenant-based assistance – the Section 8 Voucher program. The Voucher program was very

similar to the Certificate program in that eligible families were able to select housing in the private rental market and receive assistance in that housing unit.

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

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

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

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

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

1-II.B. HCV PROGRAM BASICS

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

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

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

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

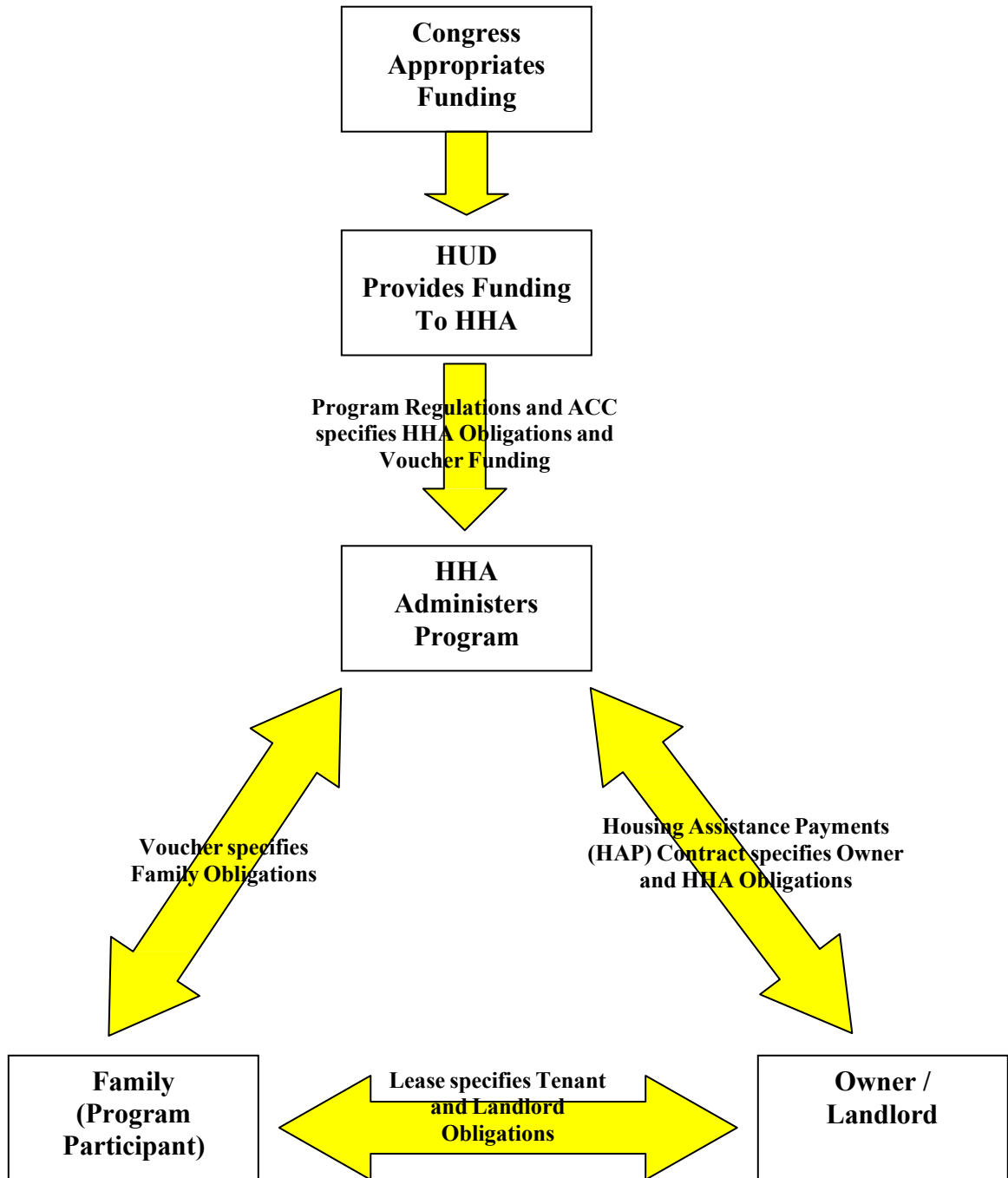
1-II.C. THE HCV PARTNERSHIPS

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

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

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

The HCV Relationships:



What does HUD do?

HUD has the following major responsibilities:

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

What does the HHA do?

The HHA 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, the HHA'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.
 - The HHA can provide some information to the owner, but the primary responsibility for tenant screening rests with the owner.
 - The owner should consider family background factors such as rent and bill-paying history, history of caring for property, respecting the rights of others to peaceful enjoyment of the property, compliance with essential conditions of tenancy, whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.
- Comply with the terms of the Housing Assistance Payments contract, executed with the HHA;
- 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 the HHA with complete and accurate information, determined by the HHA 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 the HHA;
- Allow the HHA to inspect the unit at reasonable times and after reasonable notice;
- Take responsibility for care of the housing unit, including any violations of housing quality standards caused by the family;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
- Notify the HHA 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 the HHA of any changes in family composition;

- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

If all parties fulfill their obligations in a professional and timely manner, the program responsibilities will be fulfilled 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 the HHA's agency plan. This Administrative Plan is a supporting document to the HHA agency plan, and is available for public review as required by CFR 24 Part 903.

This Administrative Plan is set forth to define the HHA'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.

The HHA 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 HHA staff shall be in compliance with the HHA'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. The HHA Administrative Plan must cover HHA policies on these subjects:

- Selection and admission of applicants from the HHA waiting list, including any HHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the HHA waiting list (Chapter 4);
- Any special rules for use of available funds when HUD provides funding to the HHA 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 15);
- Informal hearing procedures for participants (Chapter 15);
- The process for establishing and revising voucher payment standards (Chapter 11);
- 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 1);
- Policies concerning payment by a family to the HHA of amounts the family owes the HHA (Chapter 14);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 10);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- HHA screening of applicants for family behavior or suitability for tenancy (Chapter 3).

New Approach to Policy Development

HUD has developed an approach to monitoring and policy development that requires HHAs to establish policy for those purposes.

A primary focus of HUD's Rental Integrity Monitoring (RIM) program was consistency – consistency in how HHA conducts their business and in how HUD monitors HHA's activities. HUD expects that all staff will be consistent in the procedures they follow and the calculations they make and that their actions will be consistent with the HHA's Administrative Plan.

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 the PHA has adopted. The PHA's Administrative Plan is the foundation of those policies and procedures. HUD's new directions require, more than ever, that PHAs make policy choices to provide guidance to staff and consistency to program applicants and participants.

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

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

HHA Policy

The HHA will review and update the plan if needed, to reflect changes in regulations, HHA 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 HHA to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of the HHA's housing choice voucher (HCV) operations.

This chapter describes HUD regulations and HHA's 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 HHA 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 HHA 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

Federal laws require HHA 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, sexual orientation, gender identity, age, familial status, and disability. The HHA 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)

- 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

HHA Policy

No state or local nondiscrimination laws or ordinances apply above the federal directives, except as noted.

2-I.B. NONDISCRIMINATION

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

The HHA shall not discriminate because of race, color, sex, religion, familial status, age, disability or national origin, marital status, sexual orientation, gender identity, or creed (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.

HHA Policy

The HHA will not discriminate on the basis of marital status, sexual orientation, gender identity or creed.

The HHA will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or participant toward or away from a particular area based any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions

- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class.

Providing Information to Families and Owners

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

HHA Policy

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

The HHA will attempt to remedy discrimination complaints made against the HHA.

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

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A. OVERVIEW

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

The HHA must ensure that persons with disabilities have full access to the HHA'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.

HHA Policy

The HHA's policies and practices will be designed to provide assurances that all persons

with disabilities will be provided reasonable accommodation so that they may fully access and utilize the housing programs and related services. The availability of specific accommodations will be made known by including notices on HHA forms and letters to all families, and all requests will be verified so that HHA can properly accommodate the need presented by the disability.

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 the HHA can provide include changes, exceptions, or adjustments to a rule, policy, practice, or service.

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

Types of Reasonable Accommodations

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

- (1) Permitting applications and reexaminations to be completed by mail
- (2) Conducting home visits
- (3) Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the HHA range) if the HHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit
- (4) 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
- (5) Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with HHA staff
- (6) Displaying posters and other housing information in locations throughout the HHA's office in such a manner as to be easily readable from a wheelchair
- (7) A utility allowance that is higher than the applicable amount on the utility allowance scheduled. HHA will consider requests to approve a utility allowance up to twenty-percent (20%) over the published and approved utility allowance.
- (8) Exception to rent reasonableness (up to 10% over rent reasonableness determination).

2-II.C. REQUEST FOR AN ACCOMMODATION

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the HHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

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

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

HHA Policy

The HHA will encourage the family to make its request in writing using a reasonable accommodation request form. However, the HHA 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 that is used for waiting list preferences and income allowances.

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

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

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to the HHA, the HHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, the HHA 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.

. In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

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

The HHA must approve a request for an accommodation if the following three conditions are met:

- The request was made by or on behalf of a person with a disability.
- There is a disability-related need for the accommodation.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the HHA, or fundamentally alter the nature of the HHA'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 the HHA 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, the HHA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that the HHA may verify the need for the requested accommodation.

HHA Policy

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

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

If the HHA believes that the family has failed to identify a reasonable alternative

accommodation after interactive discussion and negotiation, the HHA will notify the family, in writing, of its determination within 15 business days from the date of the most recent discussion or communication with the family.

HHA Policy

During Annual Re-examination the HHA will review each accommodation. If the family no longer requires such accommodation, then the HHA will no longer grant the accommodation. Example, if at least up a family requires a reasonable accommodation to increase the Payment Standard in order to qualify for a unit and the accommodation was granted. Then during the Annual Re-examination if the family no longer requires the increase in payment standard due to changes in income, deductions, etc. the accommodation will be removed.

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

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

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

HHA Policy

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

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

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

2-II.G. PHYSICAL ACCESSIBILITY

The HHA 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

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

- This plan describes the key policies that govern the HHA's responsibilities with regard to physical accessibility.
- Notice PIH 2002-01(HA) Accessibility Notice summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- The HHA Plan provides information about self-evaluation, needs assessment, and transition plans.

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

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

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

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

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

When applicants with disabilities are denied assistance, the notice of denial must inform them of the HHA'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 the HHA's informal hearing process and their right to request a hearing and reasonable accommodation.

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

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

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

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

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

HHA Policy

The HHA 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, the HHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other HHAs, and will standardize documents. Where feasible and possible, the HHA 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 the HHA. 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.

HHA Policy

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

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

If there are fewer than 1,000 persons in a language group that reaches the 5 percent trigger, the HHA does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

2-III.D. IMPLEMENTATION PLAN

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

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

HHA Policy

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

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

Four- Factor Analysis- 2015

Pertinent Information- Helena, Montana/Helena Housing Authority

According to the U.S. Census Bureau data, the estimated population of Lewis and Clark County, Montana for 2010 was 63,395. Of that total 3.6% spoke a language other than English at home. Within the 3.6% are

1.5% are Spanish or Spanish Creole, 1.4% are Other Indo-European languages, .03% are Asian and Pacific Island languages, .03% are Other languages. Contact with persons of 'Limited English Proficiency' shows Spanish would be the language assistance being the primary language assistance need. HHA's current population consists 5.8% Hispanic, 6.4% American Indian, 2.6% African American, .03% Asian, .01% Native Hawaiian and 89.8% Caucasian.

Language Assistance

HHA will make available I Speak Cards to any applicant that has LEP. They will be located in the leasing office and visible to anyone in the leasing office. We will also post in our offices that translators can be available upon request and that translators will be provided to applicants and residents who have LEP. We will also provide a link on our website that directs applicants to the I Speak Cards on-line. Translators will be available using resources from Carroll College and members of the Helena Community.

If translators are not available, we will use translating services from CommGap, which is a 24/7 International translating service. They have offices located in Salt Lake City and Texas. Their contact information is 866-944-4049 and e-mail is translations@commgap.com.

Monitoring

HHA will review and revise this LEP Plan every two years. The report will include a report from HHA employees on the number of HHA residents who are LEP and a determination as to whether 5% of the HHA residents speak a specific language, which trigger consideration of a document translation need as described above.

HHA will also analyze staff requests for contract interpreters by the number of requests, languages requested and the cost.

HHA Plan Distribution and Training

The LEP Plan will be distributed to all staff at HHA and will be available in the HHA leasing office. HHA staff will receive annual training on the LEP Plan. All employees will be trained upon hiring so that they understand the LEP Plan.

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

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

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

The phrase “physical or mental impairment” includes:

- (4) 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
- (5) 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 live activities.

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the HHA) 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:

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

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

housing laws and regulations.

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

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

Chapter 3

ELIGIBILITY

INTRODUCTION

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

To be eligible for the HCV program:

- The applicant family must:
 - Qualify as a family as defined by HUD and the HHA.
 - 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 all family members.
 - Consent to the HHA's collection and use of family information as provided for in HHA-provided consent forms.
 - Not be ineligible for assistance in accordance with the restrictions on assistance to students enrolled in an institution of higher education status (24 CFR 5.612)
- The HHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the HHA.

Restrictions on Assistance to Students Enrolled In Institution of Higher Education

No assistance shall be provided under Section 8 of the 1937 Act to any individual who:

- Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965;
- Is under 24 years of age;
- Is not a veteran of the United States military;
- Is unmarried;
- Does not have a dependent child;
- Is not a person with disabilities, as such term is defined in section 3(b)(3)(E) of the United States Housing Act of 1937 (42 U.S.C.1437a(b)(3)(E)) and was not receiving assistance under such section 8 as of November 30, 2005; and
- Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under Section 8 of the 1937 Act.

Timing for the Verification of Qualifying Factors

The family's initial eligibility for placement on the waiting list will be made in accordance with the eligibility factors.

The qualifying factors of eligibility will not be verified until the family is in a position on the waiting list to be offered a voucher.

Applicants will be reviewed for any Sexual/Violent Offenders on the Registry at the time the application is received in the office located at 812 Abbey St. Helena, MT.

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and HHA 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, ineligible student 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 HHA 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. The HHA has the discretion to determine if any other group of persons qualifies as a family.

HHA Policy

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law.

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

Household

Household is a broader term that includes additional people who, with the HHA'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]**

The HHA 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, the HHA is bound by the court's determination of which family members continue to receive assistance.

HHA Policy

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

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

In the absence of a judicial decision, or an agreement among the original family members, the HHA will determine which family retains their placement on the waiting list, or will continue to receive assistance taking into consideration the following factors: (9) the interest of any minor children, including custody arrangements, (2) the interest of any ill, elderly, or disabled family members, (3) any possible risks to family members as a result of domestic violence or criminal activity, and (4) the recommendations of social service professionals.

Remaining Member of a Tenant Family [24 CFR 5.403]

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

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

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

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

HHA Policy

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

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

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

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

Spouse means the marriage partner of the head of household.

HHA Policy

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

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

HHA Policy

Minors who are emancipated under state law may be designated as a cohead.

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

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

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

Joint Custody of DependentsHHA Policy

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

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the HHA 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, HVC GB p. 5-29]

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

Identifying each FTS is important because (1) each family member that is an FTS, other than the head, spouse, or cohead, qualifies the family for a dependent deduction and (2) the earned income of such a FTS is treated differently from the earned 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 at least 50 years of age but below the age of 62.

Elderly Family

An *elderly family* is one in which the head, spouse, cohead, or sole member is an elderly person. Identifying elderly families is important because 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 cohead is a person with disabilities. The technical definitions of individual with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes and may include ensuring that persons with disabilities are not discriminated against based upon disability.

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

Disabled Family

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

HHA Policy

A guest can remain in the assisted unit no longer than seven (7) consecutive days or a total of 30 cumulative calendar days during any 12-month period.

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

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

3.I.K. FOSTER CHILDREN AND FOSTER ADULTS

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

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

Foster children and foster adults that are living with an applicant or assisted family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for the \$480 dependent deduction [24 CFR 5.603 and HUD-50058 IB, p. 13].

HHA 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 type of short-term or long-term foster care arrangement with the custodial agency.

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

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

3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

HHA Policy

Generally an individual who is or is expected to be absent from the assisted unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member.

When an individual is absent from the assisted unit for 180 or longer is considered permanently absent. If an individual is considered permanently absent, their voucher contract may be terminated according to Chapter 12 if it is the sole member of the household.

. Exceptions to this general policy are discussed below.

Absent Students

HHA Policy

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

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

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

HHA Policy

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

Absent Head, Spouse, or CoheadHHA Policy

An employed head, spouse, or cohead absent from the unit more than 90 consecutive days due to employment will continue to be considered a family member.

Family Members Permanently Confined for Medical Reasons [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].

HHA Policy

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

Return of Permanently Absent Family MembersHHA Policy

The family must request HHA approval for the return of any adult family members that the HHA 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].

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

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

HHA Policy

A family may make a request for a live-in aide by completing a reasonable request form, orally or by any other equally effective means of communication. HHA encourages the use of the HHA reasonable accommodation request form, but is not required when requesting reasonable accommodations 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.

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

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

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

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

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

Within 15 business days of receiving a request for a live-in aide, including all required documentation related to the request, the HHA will be required to screen the live in aide in accordance with the federal regulations and upon final determination will notify the family of its decision in writing.

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

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

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

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

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

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

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

Using Income Limits for Eligibility [24 CFR 982.201]

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

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

HHA Policy

The HHA 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 the HHA.

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

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

HHA Policy

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

Using Income Limits for Targeting [24 CFR 982.201]

At least 75 percent of the families admitted to the HHA's program during a HHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the HHA 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 HHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

Declaration [24 CFR 5.508]

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

U.S. Citizens and Nationals

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

HHA Policy

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

Eligible Non-citizens

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

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

Ineligible Non-citizens

Those non-citizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The HHA 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 15 for a discussion of informal hearing procedures.

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

HHA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the HHA that the individual or at least one family member is eligible [24 CFR 5.512(a)].

HHA Policy

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

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

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

Informal hearing procedures are contained in Chapter 16.

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

For new occupants joining the assisted family the HHA will be verified at the time they are added to the household.

If an individual qualifies for a time extension for the submission of required documents, the HHA 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.

HHA Policy

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

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216,5.216(a), CFR 5.216(e)]

All assistance applicants and participants must disclose a complete and accurate social security number for each of the household, including foster children, foster adults and live-in aides. Children under 6 are no longer exempt from the requirement.

Individuals who do not contend eligible immigration status (“noncontending” family members in a mixed family receiving prorated assistance).

Current program participants who have not previously disclosed a social security numbers, and who were at least 62 years old on January 31, 2010. The exception applies at all future moves to a new assisted unit or receives another form of housing subsidy.

Household members who have already provided a valid social security number prior to January 31, 2010. The new regulations do not require the PHA to re-verify the social security numbers of current program participants who’s SSNS have been validated through HUD’s automated system.

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 cohead, 18 years or older, 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.

The HHA must deny admission to the program if any adult 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)].

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 the HHA to deny assistance based on certain types of current or past behaviors of family members.

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

Denial of assistance includes any of the following:

- Not placing the family's name on the waiting list,
- Denying or withdrawing a voucher,

- Not approving a request for tenancy or refusing to enter into a HAP contract, 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, sexual orientation or gender identity. (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the HHA'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
- No applicant for the HCV program who has been a victim of domestic violence, dating violence, sexual assault or stalking shall be denied admission into the program if they are otherwise qualified.

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

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

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits but does not require the HHA to admit an otherwise-eligible family if the household member has completed a HHA-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).

HHA Policy

The HHA has determined and sets their policy to define “reasonable time” as 3 year period before the admissions decision for all drug related and violent criminal activity.

The HHA has defined *currently engaged in* as any use of illegal drugs during the previous six months.

Persons evicted from public housing, Indian housing, Section 23, or terminated from any Housing Choice Voucher (Section 8) program because of drug-related criminal activity or violent criminal

activity are ineligible for admission to Public Housing and the Housing Choice Voucher Program for a three-year period beginning on the date of such eviction or termination.

HHA Policy

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

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.
- HHA will deny admission to any family in which a family member is subject to a lifetime sex offender registration requirement or individuals listed on the Montana Sexual and Violent Offenders Registry. This provision will not be waived for individuals subject to a lifetime sex offender registration and/or listed as Sexual Offenders on the Montana Sexual and Violent Offenders Registry.
- If a family member has been convicted of manufacturing or producing methamphetamine (speed) on an assisted housing site, Section 8 housing, or in Public Housing.
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3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE

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

Criminal Activity [24 CFR 982.553]

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

HHA Policy

The HHA has determined and sets their policy to define “reasonable time” as a 3-year period before the admissions decision for all other criminal activity that would threaten the safety, health and peaceful enjoyment of the premises by other residents, HHA, HHA employees, contractors, subcontractors or agent of the HHA involved in housing operations.

The HHA has determined and sets policy to define “engaged in or engaging in or recent history of criminal activity to mean: any act within the past 3 years by applicants or participants, household members, or guests which involved criminal activity that would

threatened the health, safety or right to peaceful enjoyment of the rental unit by other residents or employees of HHA, which did or did not result in the arrest and/or conviction of the applicant or participant, household members, or guests.

Persons evicted from public housing, Indian housing, Section 23, or any Housing Choice Voucher(Section 8) program because of all other criminal activity are ineligible for admission to the HCV Program for a three year period beginning on the date of such eviction.

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

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

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

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

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

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

- Conviction for drug-related or violent criminal activity within the past 3 years.

- Circumstantial evidence, a preponderance of evidence, or any arrests for drug-related or violent criminal activity within the past 3 years.

- Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 3 years.

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

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

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

HHA Policy

The HHA **will not** deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program or the Welfare to Work voucher program.

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

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

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

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

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

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

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

A family will be given the opportunity to pay the debt within thirty days of the eligibility interview. If the family fails to meet their obligation to repay the debt, the applicant will be denied assistance.

Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program, or any other federal/state assisted program.

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

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

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

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

3-III.D. SCREENING

Screening for Eligibility

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

HHA Policy

The HHA will perform a criminal background check through local law enforcement for every person 18 years of age and older.

If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, the HHA will request the applicant to be fingerprinted and will request the information from the National Crime Information center (NCIC).

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

Screening for Suitability as a Tenant [24 CFR 982.307]

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

HHA Policy

The HHA will not conduct additional screening to determine the applicant's suitability for tenancy.

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

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

The HHA will advise families how to file a complaint if they have been discriminated against by an owner. The HHA will advise the family to make a Fair Housing complaint. The HHA may also report the owner to HUD (Fair Housing/Equal Opportunity) or the local Fair Housing Organization.

HHA Policy

The HHA 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. The HHA will not provide any additional information to the owner, such as tenancy history, criminal history, credit background, etc.

3-III.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE**Evidence [24 CFR 982.553(c)]**HHA Policy

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

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

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

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

HUD authorizes the HHA 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).

HHA Policy

The HHA 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;

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

The HHA 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.

Successfully completed an Anger Management program.

HHA will also consider multiple credible letters of support which may include the following:

- Provides copies of certificates of completed programs
- Recommendation from a Social Worker

- Recommendation from a Counselor
- Recommendation from a Minister
- Has been employed for the last (6) six months. Must provide documentation from employer.
- Is currently employed.
- Completed a Self Sufficiency course. Must provide all documentation.

All documentation must be on letterhead from that agency/professional. Or if by an individual signed by that individual. Once all the documentation is provided it will be determined whether or not the applicant may receive a voucher.

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

HUD permits HHAs 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.

HHA 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 HHA request.

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

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

HHA Policy

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

Eligible for Assistance

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

If the HHA determines that a family is not eligible for the program for any reason, the family must be notified promptly. The notice must describe (1) the reasons for which assistance has been denied (2) the family's right to an informal review, and (3) the process for obtaining the informal review [24 CFR 982.554 (a)]. See Chapter 15, for informal review policies and procedures.

HHA Policy

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

If a HHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the HHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. The HHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)]

HHA Policy

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

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

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES
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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:

A severe, chronic disability of a person 5 years of age or older which:

- Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - Is manifested before the person attains age twenty-two;
 - Is likely to continue indefinitely;
 - 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*
 - Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.”
- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

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

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

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

Individual with Handicaps [24 CFR 8.3]

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such 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; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

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

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

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

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

Chapter 4

APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

When a family wishes to receive Section 8 HCV assistance, the family must attend the HHA's orientation to provide the HHA with the information needed to determine the family's eligibility to be added to the waiting list. HUD requires the HHA to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, the PHA must select families from the waiting list in accordance with HUD requirements and HHA policies as stated in the administrative plan and the annual plan.

The PHA 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 the HHA 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 the HHA affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that the HHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and HHA 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 apply for assistance. It also specifies how the HHA will handle the information it receives.

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

Part III: Selection for HCV Assistance. This part describes the policies that guide the HHA 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 HHA 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 the HHA's efforts to accept information, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes the HHA'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 the HHA to determine the format and content of HCV applications, as well how such applications will be made available to interested families and how applications will be accepted by the HHA.

HHA Policy

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

Families will be placed on the waiting list by attending the HHA's orientation; which is scheduled on Tuesday's at 2:00 p.m. and Thursday's at 10:00 a.m. (unless those days fall on a holiday) at the HHA office located at 812 Abbey, Helena.

Or;

Families may also apply on-line at HHAMT.ORG

This will enable the family to be placed on the waiting list and date and time stamp their application.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

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

The HHA 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 HHA application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). The HHA must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or the HHA must provide an alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of the HHA's policies related to providing reasonable accommodations for people with disabilities.

Limited English Proficiency

HHA 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 the HHA's policies related to ensuring access to people with limited English proficiency (LEP).

4-I.D. PLACEMENT ON THE WAITING LIST

The HHA 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 HHA 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)].

Eligible for Placement on the Waiting ListHHA Policy

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

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

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

PART II: MANAGING THE WAITING LIST**4-II.A. OVERVIEW**

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

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

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

The HHA's HCV waiting list must be organized in such a manner to allow the HHA 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 (number of bedrooms family qualifies for under HHA subsidy standards);
- Number of persons in family;
- Date and time of application;
- Preference Status;
- Annual (gross) family income
- Racial or ethnic designation of the head of household.

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

HHA Policy

The HHA 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, shelter plus care or moderate rehabilitation program the HHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other 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.

HHA Policy

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

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

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

HHA Policy

The HHA will close the waiting list when the estimated waiting period for housing assistance for applicants on the list reaches 24 months for the most current applicants. Where the HA has particular preferences or funding criteria that require a specific

category of family, the HHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

Reopening the Waiting List

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

HHA Policy

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

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

- Local papers of general circulation
- Minority papers of general circulation

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

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

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

HHA 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

HHA 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 informational 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

HHA Policy

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

HHA Policy

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

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

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

Purging the Waiting List

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

HHA Policy

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

To update the waiting list, the HA 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 the HHA has on record for the family. The update request will provide a deadline by

which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

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

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

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

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

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

Removal from the Waiting List

HHA Policy

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

If a family is removed from the waiting list because the HHA has determined the family is not eligible for assistance, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding the HHA's decision (see Chapter 15) [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 the HHA 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.

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

4-III.B. SELECTION AND HCV FUNDING SOURCES

Special Admissions [24 CFR 982.203]

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

Targeted Funding [24 CFR 982.204(e)]

HUD may award a HHA funding for a specified category of families on the waiting list. The HHA 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.

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

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

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

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

HHA Policy

A preference does not guarantee admission to the program. Preferences are used to establish the order of placement on the waiting list. Every applicant must meet the HHA's Selection Criteria as defined in this policy.

The HHA has selected the following system to apply local preferences:

- All local preferences will be treated equally.

Among applicants with equal preference status, the waiting list will be organized by date and time.

The HHA will offer public notice when changing its preference system.

The HHA uses the following local preference system:

Substandard Housing

- * Applicants who live in substandard housing are families whose dwelling meets one or more of the following criteria provided that the family did not cause the condition:
- * Is dilapidated, as cited by officials of a code enforcement office and does not provide safe, adequate shelter; has or more critical defects or a combination of defects requiring considerable repair; endangers the health, safety, and well-being of family.
- * Does not have operable indoor plumbing.
- * Does not have usable flush toilet in the unit for the exclusive use of the family.
- * Does not have adequate, safe electrical service.
- * Does not have an adequate, safe source of heat.
- * Should, but does not, have a kitchen. Single Room Occupancy (SRO) Housing is not substandard solely because it does contain sanitary and/or food preparation facilities in the unit.
- * Has been declared unfit for habitation by a government agency.

Families who are residing with friends or relatives on a temporary basis will be included in the substandard definition.

- An applicant who is a "Homeless Family" is considered to be living in substandard housing.

"Homeless Families":

Lack a fixed, regular and adequate nighttime residence; AND

Have a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations (including welfare hotels, congregate shelters and transitional housing), or an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not ordinarily used as a sleeping accommodation for human beings.

***Homeless families may maintain their place on the waiting list while completing a transitional housing program.**

A Homeless family does not include anyone imprisoned or detained pursuant to Federal, State or local law or an Act of Congress.

Verification of Substandard Housing

Verification of substandard housing includes written or oral verification by a government agency or a notarized statement from the applicant's current landlord or owner of the unit that the unit's condition meets the definition of standard. For "Homeless Families" verification is certification of this status from a public or private facility providing shelter to the family, or from local police or a social service agency.

Rent Burden

Families paying more than 50% of their income for rent and utilities for at least 90 days commencing before they were selected from the Waiting List and continuing through the verification of preference will receive this preference.

For purposes of this preference, "Family Income" is Gross Monthly Income as defined in the regulations.

"Rent" is defined as the actual amount due under a lease or occupancy agreement calculated on a monthly basis without regard to the amount actually paid, plus the monthly amount of resident-supplied utilities which can be either:

HHA's reasonable estimate of the cost of such utilities, using the HCV/Section 8 Utility Allowance Schedule; or

The average monthly payments the family actually made for these utilities in the most recent 12-month period, or if information is not obtainable for the entire period, the average of at least the past 3 months.

An applicant family may choose which method to use to calculate utilities expense. Any amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the total rent burden if included in Family Income. The applicant must show that they actually paid the utility bills, regardless of whose name the service is under.

* If the applicant pays their share of rent to a cohabitant and is not named on the lease, HHA will require both verification from the Landlord that the applicant resides in the unit, and verification from the cohabitant of the amount of rent paid by the applicant.

Members of a cooperative are “renters” for the purposes of qualifying for the preference. In this case, “Rent” would mean the charges under the occupancy agreement.

Verification of Rent Burden

Families are required to verify their income, the amount of rent and utilities they are obligated to pay, and the period of time they have been residing in their current unit. Families must furnish copies of rental receipts and/or the lease. HHA may contact the landlord directly by mail or telephone.

In cases where the family pays rent to a co-renter or sublets the unit, HHA requires a notarized certification from the person who receives the money from the applicant, and verification from the owner that the family resides in the unit.

If there is no rental agreement, and no other landlord verification, HHA requires documentation verifying that rent and utilities is more than 50% of income for at least the previous 90 calendar days.

If there is no lease or occupancy agreement and the family is receiving public assistance, HHA may verify the amount of rent and address of the unit with the appropriate social service agency. If there is no lease or occupancy agreement, and the family is not receiving public assistance, HHA will require receipts and other forms of identification which indicate the residence. Such documents include receipts, telephone bills, utility bills, driver's license, and school records. Documentation of the amount of rent due must be provided for a period of 90 calendar days.

HHA can use either the actual cost of utilities or HHA’s HCV utility allowance schedule In order to verify the amount the family actually paid for utilities that were not covered in the rent. If the HCV Utility Allowance Schedule is not used:

Copies of receipts, canceled checks, bills showing previous utility payments

Written verification of consumption costs directly from the utility or service supplier

Verification must be provided for a minimum period of 3 months

Victims of Domestic Violence: HHA will offer a local preference to applicants that are a victim of domestic violence, dating violence, sexual assault and stalking within the past 6 months. Families are also eligible for this preference if there is proof that the family is currently living in a situation where they are being subjected to or victimized by violence in the home. The following criteria are used to establish a family’s eligibility for this preference:

No applicant for the HCV program who has been a victim of domestic violence, dating violence, sexual assault or stalking shall be denied admission into the program if they are otherwise qualified.

This preference is for applicants where actual or threatened physical violence is directed against the applicant or other members of the applicant's household within the past 6 months. HUD defines this as "actual or threatened physical violence directed against one or more members of the applicant's family by a spouse or other members of the applicant's household."

Actual or threatened physical violence directed against the applicant or the applicant's family by a spouse or other household member who lives in the unit with the family.

An applicant who lives in a violent neighborhood or is fearful of other violence outside the household is not considered involuntarily displaced.

The applicant must certify that the abuser will not reside with the applicant unless HHA gives prior written approval.

HHA will approve the return of the abuser to the household under the following conditions:

HHA verifies that the abuser has received therapy or counseling that appears to minimize the likelihood of recurrence of violent behavior.

A counselor, therapist or other appropriate professional recommends in writing that the individual be allowed to reside with the family.

If the abuser returns to the family without approval of HHA, HHA will deny or terminate assistance for breach of the certification.

Right to confidentiality All information (including the fact that an individual is a victim of domestic violence, dating violence, sexual assault or stalking) provided to the HHA or to a HCV (Section 8) owner or manager in connection with a verification required under the Victim of Domestic Violence preference (HUD Form 5382) or verification provided in lieu of such verification where a waiver of verification is granted, shall be retained by the receiving party in confidence and shall neither be entered in any shared database nor provided to any related entity, except where disclosed is:

1. Requested or consented to by the individual in writing, or
2. Required for use in connection with a termination of HCV (Section 8) assistance, as permitted in VAWA, or
3. Otherwise required by applicable law.

Working Family Preference

A family where the head of household, co-head, spouse, or other adult member is verifiably employed at the beginning of the assistance program:

- i. on a full-time basis (not less than an average of 30 hours per week at no less than the Federal Minimum wage times 2,000 hours); AND
- ii. Has been continuously employed for one year prior to the beginning of their assistance with the Housing Choice Voucher program.

Applicant families where the head of household, co-head, spouse, or other adult member is age 62 or older or is a person with disabilities must be given the benefit of the working family preference.

Verification of income for working family preference

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

HHA Policy

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

- Enterprise Income Verification (EIV) 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

HHA 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 the HHA. The documents must not be damaged, altered or in any way illegible.

The HHA will accept documents dated within 60 days from the date of the interview 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, the HHA would accept the most recent report.

Print-outs from web pages are considered original documents.

The HHA 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.

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

HUD establishes income limits by family size for the area in which the PHA is located. The income limits are published annually in a HUD Notice and are generally effective on the date of publication. The income limits are available on the Internet at www.huduser.com at the “Datasets” portal.

There are two income limits that are used to determine eligibility for the housing choice voucher program and a third that is used to ensure that the PHA has met its target for assisting the neediest families in the community.

The *extremely low-income limit* is set at 30 percent of the area median income. HHA must ensure that 75 percent of its admissions in the fiscal year are families whose incomes are at or below the extremely low-income limit.

The *very low-income limit*, which is set at 50 percent of the area median income.

The *low income-limit*, set at 80 percent of the area median income, is used for families whose incomes fall above the very low-income limits but who are considered to be eligible for assistance because they are:

Continuously assisted under public housing or;

Non-purchasing households in the following homeownership programs: HOPE 1, HOPE 2, or other HUD-assisted multifamily home ownership programs covered under 24 CFR 284.173;

Displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract.

A PHA may adopt local policies permitting the admission of additional categories of low-income families to address essential local housing needs.

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during the HHA’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, HHA 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)].

HHA Policy

The HHA 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

The HHA 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 HHA is required to use targeted funding to assist only those families who meet the specified criteria, and HHA is not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

HHA Policy

Families will be selected from the waiting list based on the targeted funding or selection preference(s) for which they qualify, and in accordance with the HHA's hierarchy of preferences, if applicable. Within each targeted funding or preference category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the HHA. Documentation will be maintained by the

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

4-III.D. NOTIFICATION OF SELECTION

When a family has been selected from the waiting list, the HHA must notify the family.

HHA Policy

The HHA will notify the family by first class mail when it is selected from the waiting list. The notice will inform the family that they are reaching the top of the waiting list and to call HHA to schedule a briefing appointment. The letter will also indicate:

Who is required to attend the briefing?

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

Preference verification information and income guidelines.

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

4-III.E. THE APPLICATION INTERVIEW

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

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

HHA Policy

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

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

The interview will be conducted only if the head of household or spouse/cohead 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.

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

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of 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, the HHA will provide translation services in accordance with the HHA's LEP plan.

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

4-III.F. COMPLETING THE APPLICATION PROCESS

The HHA must verify all information provided by the family (see Chapter 7). Based on verified information, the HHA 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.

HHA Policy

If the HHA determines the family is ineligible, the HHA will send written notification of the ineligibility determination within 10 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (Chapter 15).

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

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

Chapter 5

BRIEFINGS AND VOUCHER ISSUANCE

INTRODUCTION

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, the HHA 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, the HHA issues the family a voucher. The voucher includes the unit size the family qualifies for based on the HHA'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 HHA policies related to these topics in two parts:

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

Part II: Subsidy Standards and Voucher Issuance. This part discusses the HHA's standards for determining how many bedrooms a family of a given composition qualifies for, which in turn affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

PART I: BRIEFINGS AND FAMILY OBLIGATIONS

5-I.A. OVERVIEW

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

The HHA 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, the HHA 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.

HHA Policy

Briefings will be conducted in a group meeting.

The head of household and any other adult members of the household are required to attend the briefing. If the head of household is unable to attend, the HHA may approve another adult family member to attend the briefing.

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

Briefings will be conducted in English. For limited English proficient (LEP) applicants, the HHA will provide translation services.

Notification and Attendance

HHA 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, and to call HHA to schedule a briefing appointment. If the notice is returned by the post office with no forwarding address, a notice of denial (see Chapter 3) will be sent to the family's address of record, as well as to any alternate address provided on the initial application.

Applicants who fail to attend a scheduled briefing will automatically be scheduled for another briefing. The HHA will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without HHA 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 the HHA's jurisdiction;
- For families eligible under portability, an explanation of portability. The HHA cannot discourage eligible families from moving under portability;

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 the HHA's policies on any extensions or suspensions of the term. If the HHA allows extensions, the packet must explain how the family can request an extension.

- A description of the method used to calculate the housing assistance payment for a family, including how the HHA determines the payment standard for a family, how the HHA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how the HHA 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 the HHA jurisdiction under portability procedures, the information must include an explanation of how portability works.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy.
- A statement of the HHA policy on providing information about families to prospective owners.
- The HHA 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.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the HHA.
- The family obligations under the program.
- The grounds on which the HHA may terminate assistance for a participant family because of family action or failure to act.
- HHA informal hearing procedures including when the HHA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.
- Notice of Occupancy Rights Under the Violence Against Women Act & Certification

Additional Items to be Included in the Briefing Packet

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

HHA Policy

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

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.

The Montana residential landlord and Resident Act of 1977

Utility Schedules

5-I.C. FAMILY OBLIGATIONS

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

HHA Policy

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

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

Family Obligations [24 CFR 982.551]

The family must supply any information that HHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status.

"Information" includes any requested certification, release or other documentation.

The family must supply any information requested by HHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.

The family must disclose and verify Social Security Numbers (as provided by 24 CFR 5.216) and must sign and submit consent forms for obtaining information in accordance with 24 CFR 5.230.

- All information supplied by the family must be true and complete.
- The family is responsible for an HQS breach caused by the family.
- The family must allow HHA to inspect the unit at reasonable times and after reasonable notice.
- The family may not commit any serious or repeated violations of the lease.
- The family must notify the owner and/or, at the same time, notify HHA with a 30 days written notice before the family moves out of the unit or terminates the lease upon notice to the owner.
- The family must *promptly* give HHA 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 HHA. The family must *promptly* inform HHA of the birth, adoption or court-awarded custody of a child. The family must request HHA and owner approval to add any other family member as an occupant of the unit.
- The family must *promptly* notify HHA if any family member no longer resides in the unit.

Families are required to notify HHA if any family member leaves the assisted household. When the family notifies HHA, they must furnish the following information:

- The date the family member moved out.
- The new address, if known, of the family member.
- A statement as to whether the family member is temporarily or permanently absent.

If HHA has given approval, a foster child or a live-in aide may reside in the unit. If the family does not request approval or HHA approval is denied, the family may not allow a foster child or live-in aide to reside with the assisted family.

Members of the household may engage in legal profit-making activities in the unit, but only if such activities are incidental to primary use of the unit as a residence by members of the family.

If the business activity area results in the inability of the family to use any of the critical living areas, such as a bedroom utilized for a business which is not available for sleeping, it will be considered a violation.

If HHA determines that the use of the unit as a business is not incidental to its use as a dwelling unit, it will be considered a program violation.

If HHA determines the business is not legal, it will be considered a program violation.

- The family must not sublease or let the unit.
- The family must not assign the lease or transfer the unit.
- The family must supply any information or certification requested by HHA to verify that the family is living in the unit, or relating to family absence from the unit, including any HHA-requested information or certification on the purposes of family absences. The family must cooperate with HHA for this purpose. The family must promptly notify HHA and/or owner of absence from the unit.
- The family must not own or have any interest in the unit.
- The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with any Federal housing program.
- The household members may 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.
- The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. An assisted family, or members of the family, may not receive Section 8 resident-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or

in accordance with HUD requirements) federal, State or local housing assistance program.

- The family must promptly notify the HHA in writing if any family member no longer lives in the unit.
- If the HHA has given approval, a foster child or a live-in aide may reside in the unit. The HHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when HHA 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.
- The family must pay utility bills and provide and maintain any appliances 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, or a participant in the HCV Homeownership Program).
- 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 HHA 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 HHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the HHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE**5-II.A. OVERVIEW**

The HHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions. This part presents the policies that will be used to determine the family unit size (also known as the voucher size) a particular family should receive, and the policies that govern making exceptions to those standards. The HHA 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, the HHA determines the appropriate number of bedrooms under the HHA subsidy standards and enters the family unit size on the voucher that is issued to the family. The family unit size does not dictate the size of unit the family must actually lease, nor does it determine who within a household will share a bedroom/sleeping room.

The following requirements apply when the HHA determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide 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 HHA subsidy standards.

HHA Policy

HHA will assign one bedroom for each two persons in the household; except in the following circumstances:

One additional bedroom for every two remaining family members and essential persons, which allows the family to choose that family members six years of age or older are not required to share a bedroom with family members of the opposite sex. That children are not required to share a bedroom with other adult family members, and that children of the same sex with more than 6 years of age difference are not required to reside in the same bedroom. Children under the age of two, of either sex, may share a bedroom with parents for purposes of meeting the

occupancy standards. Children over the age of two are not required to share the same bedroom with a single parent head of household, unless that is family choice.

The family may select a different size dwelling unit than that listed on the Voucher. There are three criteria to consider:

Subsidy Limitation: The family unit size as determined for a family under HHA subsidy standard for a family assisted in the voucher program is based on HHA's adopted payment standards. The payment standard for a family shall be the *lower of*:

The payment standard amount for the family unit size; or

The payment standard amount for the unit size rented by the family.

Utility Allowance: The utility allowance used to calculate the gross rent is based on the size the family's Voucher is issued and irrespective of the size of the unit the family chooses to rent.

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

Voucher Size	GUIDELINES FOR DETERMINING VOUCHER (BEDROOM) SIZE Persons in Household	
	Minimum Number	Maximum Number
0 Bedroom	1	2
1 Bedroom	1	3
2 Bedrooms	2	6
3 Bedrooms	3	8
4 Bedrooms	4	10
5+ Bedrooms	6	12

5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

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

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

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

HHA Policy

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

The family must request any exception to the subsidy standards in writing or other effective means of communication for person with a disability. The request must explain the need or justification for a larger family unit size, and must include appropriate documentation. Requests for persons with disabilities will be verified as provided in Chapter 2 under reasonable accommodation and verification unless the disability and the disability-related request for accommodation is readily apparent or otherwise known.

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

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

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

The voucher is the family's authorization to search for housing. It specifies the unit size for which the family qualifies, and includes both the date of voucher issuance and date of expiration. It contains a brief description of how the program works and explains the family obligations under the program. The voucher is evidence that the HHA has determined the family to be eligible for the program, and that the HHA expects to have money available to subsidize the family if the family finds an approvable unit. However, the HHA does not have any liability to any party by the issuance of the voucher, and the voucher does not give the family any right to participate in the HHA's housing choice voucher program [Voucher, form HUD-52646]

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

HHA Policy

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

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

HHA Policy

Prior to issuing any vouchers, the HHA will determine whether it has sufficient funding in accordance with the policies in Part VIII of Chapter 12.

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

HHA Policy

The initial voucher term will be a minimum of 60 calendar days. HHA may grant voucher terms up to 120 days in order to maximize voucher utilization

The family must submit a Request for Tenancy Approval and proposed lease within the term as noted on the family voucher.

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

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

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

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

HHA Policy

If a voucher term is less than 120 days, the HHA will extend the term up to 60 days from the beginning of the initial term if the family needs and requests an extension as a reasonable accommodation to make the program accessible to and usable by a family member with a disability or to a family. If the family needs an extension in excess of 60 days, HHA will extend the voucher term for the amount of time reasonably required for said reasonable accommodation.

A family may request a written request for an extension of the voucher time period. All requests for extensions must be received 15 days prior to the expiration date of the voucher.

Extensions are permissible at the discretion of HHA up to a maximum of an additional 60 days primarily for these reasons:

Extenuating circumstances such as hospitalization or a family emergency for an extended period of time which has affected the family's ability to find a unit within the initial sixty-day period. Verification is required.

HHA is satisfied that the family has made a reasonable effort to locate a unit, including seeking the assistance of HHA, throughout the initial sixty-day period. A completed search record is required.

The family was prevented from finding a unit due to disability accessibility requirements or large size 4 or more bedroom unit requirement. The Search Record is part of the required verification.

HHA extends in one or more increments. Unless approved by a Manager, no more than 2 extensions of 30 days or less will be granted and never for a total of more than an additional sixty days or a maximum term of 120 days.

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

HHA must provide for suspension of the initial or any extended term of the voucher from the date that the family submits a request for HHA approval of the tenancy until the date HHA notifies the family in writing whether the request has been approved or denied. "Suspension" means stopping the clock on a family's voucher term from the time a family submits the RTA until the time the HHA approves or denies the request [24 CFR 982.4].

Expiration of Voucher Term

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

HHA Policy

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

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

Chapter 6**INCOME AND SUBSIDY DETERMINATIONS**

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

INTRODUCTION

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

PART I: ANNUAL INCOME**6-I.A. OVERVIEW**

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

5.609 Annual income.

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

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

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

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

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

6-I.B. HOUSEHOLD COMPOSITIONS AND INCOME

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

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(c)(2)].
Head, spouse, or cohead 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 cohead)	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].

HHA Policy

Generally an individual who is or is expected to be absent from the assisted unit for less than 180 consecutive months in a 12 month period of time is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

Absent StudentsHHA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the HHA 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 household member the student will be required to sign all forms deemed necessary by the PHA. Student will also be required to report all income and student financial aid information.*

Absence due to Incarceration

If the sole member is incarcerated for more than 90 consecutive days, s/he will be considered permanently absent. Any member of the household, other than the sole member, will be considered permanently absent if s/he is incarcerated for 90 days.

The HHA will determine if the reason for incarceration is for drug-related or violent criminal activity.

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].

HHA Policy

If a child has been placed in foster care, the HHA will verify with the appropriate agency whether and when the child is expected to return to the home.

If the time period is to be greater than 12 months from the date of removal of the child/ren, the Voucher and/or bedroom size will be reduced. If all the children are removed from the home permanently, the voucher and/or bedroom size will be reduced in accordance with the HHA's subsidy standards.

Absent Head, Spouse, or Cohead**HHA Policy**

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

Family Members Permanently Confined for Medical Reasons

An individual permanently confined to a nursing home or hospital may not be named as head, spouse or co-head, but may continue as a family member at the family's discretion. The family has a choice with regard to how the permanently confined individual's income will be counted. The family may elect either of the following.

- Include the individual income and receive allowable deductions related to the medical care of the permanently confined individual or,
- Exclude the individual's income and not receive allowances based on s/he medical care of the permanently confined individual.

The permanently confined member is listed on the 50058 as an adult who is not head, spouse, or co-head when the permanently confined family is married to the person who is or will become the head of the family.

[HCV GB, p. 5-22].

HHA Policy

The HHA 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. A person that is temporarily absent will have their income included. The family may present evidence the family member is confined on a permanent basis and request the person not be considered a family member. If the verification indicates the family member will return in less than 90 consecutive days (and up to 180 days after approval of the Housing Authority authorized designee) the family member will not be considered permanently absent.

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

Joint Custody of Dependents

HHA Policy

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

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

HHA Policy

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

- (1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the HHA will treat that adult as a visitor for the first 30 days.
- (2) If by the end of that period, court-awarded custody or legal guardianship has been awarded to the caretaker, the assistance will be transferred to the caretaker.
- (3) If custody is awarded for a limited time in excess of stated period, the HHA will state in writing that the transfer of the assistance is for that limited time or as long as they have custody of the children. The HHA will use discretion as deemed appropriate in determining any further assignment of the assistance on behalf of the children.
- (4) When the HHA approves a person to reside in the unit as caretaker for the child/ren, the income should be counted pending a final disposition. The HHA will work with the appropriate service agencies and the landlord to provide a smooth transition in these cases.
- (5) If a member of the household is subject to a court order that restricts him/her from the home for more than 90 days, the person will be considered permanently absent.

6-I.C. ANTICIPATING ANNUAL INCOME

The HHA 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

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

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

HUD allows 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 the PHA does not determine it is necessary to obtain additional third-party data.

HHA Policy

When EIV is obtained and the family does not dispute the EIV employer data, HHA will use current paystubs to project annual income. HHA will use 4 consecutive paystubs to average tenant income. In cases where tenants do not provide paystubs, third party verification will be obtained.

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

Known Changes in Income

If the HHA 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 the HHA would calculate annual income as follows:
($\$6/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}$) + ($\$6.25 \times 40 \text{ hours} \times 45 \text{ weeks}$).

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the HHA 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 the HHA's policy in Chapter 11 does not require interim reexaminations for other types of changes.

Using Enterprise Income Verification (EIV) to Project Income

HUD requires the use of verification (EIV). EIV is "the verification of income, before or during a family reexamination and interim reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals" [VG, p. 7].

HUD allows HHA to use EIV information in conjunction with family-provided documents to anticipate income [EIV].

HHA Policy

HHA procedures for anticipating annual income will include the use of EIV methods approved by HUD in conjunction with family-provided documents dated within the last 60 days of the HHA interview date.

The HHA will follow "HUD Guidelines for Projecting Annual Income When Enterprise Income Verification (EIV) Data Is Available" in handling differences between EIV and family-provided income data. The guidelines depend on whether a difference is substantial or not. HUD defines *substantial difference* as a difference of \$200 or more per month.

No Substantial Difference. If EIV information for a particular income source differs from the information provided by a family by less than \$200 per month, the HHA will follow these guidelines:

If the EIV figure is less than the family's figure, the HHA will use the family's information.

If the EIV figure is more than the family's figure, the HHA will use the EIV data unless the family provides documentation of a change in circumstances to explain the discrepancy (e.g., a reduction in work hours). Upon receipt of acceptable family-provided documentation of a change in circumstances, the HHA will use the family-provided information.

Substantial Difference. If EIV information for a particular income source differs from the information provided by a family by \$200 or more per month, the HHA will follow these guidelines:

The HHA will request written third-party verification from the discrepant income source in accordance with 24 CFR 5.236(b)(3)(i).

When the HHA cannot readily anticipate income (e.g., in cases of seasonal employment, unstable working hours, or suspected fraud), the HHA will review

historical income data for patterns of employment, paid benefits, and receipt of other income.

The HHA will analyze all EIV, third-party, and family-provided data and attempt to resolve the income discrepancy.

The HHA will use the most current verified income data and, if appropriate, historical income data to calculate anticipated 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)].

HHA Policy

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

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.

HHA 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.

Temporary employment income is not counted in annual income. Temporary work is work that is less than 31 days by intention. The employee would be informed of the appropriate length of the job when employed, based on the hiring criteria of the employer, as established by labor laws.

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 cohead) 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(f)(1), 5058)
- 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)
- *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(c))*
- *Any amount received under the Richard B. Russell School lunch Act (42 U.S.C. 1760 (e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, infants, and Children (WIC);*
- Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). Any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if that individual is over the age of 23 with dependent children (Pub. L 109-115, section 327)(as amended);

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 the HHA 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 HHA'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)].

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 could be working 10 hours per week for 50 weeks at the established minimum wage.
- Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
- New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly cash maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

Calculation of the Disallowance

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

HHA Policy

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

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

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

HHA Policy

The initial EID begins 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.

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

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

HHA will maintain a tracking system to ensure correct application of the earned income disallowance.

Tracking the Earned Income Exclusion

The earned income exclusion will be reported on the HUD 50058 form. Documentation will be included in the family's file to show the reason for the reduced increase in rent.

Such documentation will include:

- Date the increase in earned income was reported by the family
- Name of the family member whose earned income increased
- Reason (new employment, participation in job training program, within 6 months after receiving TANF) for the increase in earned income
- Amount of the increase in earned income (amount to be excluded)
- Date the increase in income is first excluded from annual income
- Date(s) earned income ended and resumed during the initial cumulative 12-month period of exclusion (if any)
- Date the family member has received a total of 12 months of the initial exclusion

- Date the 12-month phase-in period began
- Date(s) earned income ended and resumed during the second cumulative 12-month period (phase-in) of exclusion (if any)
- Date the family member has received a total of 12 months of the phase-in exclusion
- Ending date of the maximum 48-month (four year) disallowance period (48 months from the date of the initial earned income disallowance)

Client must be notified within 30 days in writing for review of increase of rent due to completion of Mandatory Income Disallowance. Tenant rent will be adjusted accordingly to verification of income. Increase of rent will be initiated the following month of completion of Mandatory Income Disallowance.

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].

HHA Policy

In order to verify the net income from a business, the HHA will view IRS and financial documents from prior years and use this information to anticipate income for the next 12 months.

Acceptable methods of verification include:

1. **IRS Form 1040, including**
 - **Schedule C(Small business)**
 - **Schedule E(Rental Property Income)**
 - **Schedule F(Farm Income)**

If accelerated depreciation was used on the tax return or financial statement, an accountant’s calculation of depreciation expense, computed using straight-line depreciation rules.

2. Audited or un-audited financial statement(s) of the business.
3. Credit report or loan application.
4. Documents such as manifests, appointment books, cash books, bank statements, and receipts will be used as a guide for the prior six months (or lesser period if not

in business for six months) to project income for the next 12 months. The family will be advised to maintain these documents in the future if they are not available.

The HHA may request the documentation identified in #4 above, regardless of the verification used.

Business Expansion

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

HHA Policy

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

Capital Indebtedness

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

HHA Policy

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

Negative Business Income

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

Withdrawal of Cash or Assets from a Business

HUD regulations require the HHA 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.

HHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of an assisted family provided an up-front loan of \$2,000 to help a business get started, the HHA 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

HHA 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.

Child Care Business

If an applicant/participant is operating a licensed day care business, income will be verified as with any other business.

If the applicant/participant is operating a "cash and carry" operation (which may or may not be licensed), the HHA will require that the applicant/participant complete a form for each customer which indicates: name of person(s) whose child (children) is/are being cared for, phone number, number of hours child is being cared for, method of payment (check/cash), amount paid, and signature of person.

If the family has filed a tax return, the family will be required to provide it.

The HHA will conduct interim reevaluations every 120 days and require the participant to provide a log with the information about customers and income.

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 the HHA 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, the HHA 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 HHA policies related to each type of asset.

General Policies

Income from Assets

The HHA 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 the HHA 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) the HHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, the HHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

HHA 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 the HHA to show why the asset income determination does not represent the family's anticipated asset income.

Valuing Assets

The calculation of asset income sometimes requires the HHA 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.

HHA 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, the HHA 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, the HHA 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 PHA established passbook savings rate. PIH 2012-29 allows for PHA's to establish their own passbook rate that the PHA will apply in calculating imputed assets from income and the PHA must review its passbook rate

at least annually to determine if it is within the safe harbor range.
www.fidic.gov/regulations/resources/rates/.

HHA Policy

HHA will use its own passbook rate that will be reviewed annually and taken from averaging local banks savings interest rate that are publicly available and that do not exceed HUD's safe harbor range.

Determining Actual Anticipated Income from Assets

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

Withdrawal of Cash or Liquidation of Investments

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

Jointly Owned Assets

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

HHA Policy

If an asset is owned by more than one person and any family member has unrestricted access to the asset, the HHA 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, the HHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the HHA 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 the HHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

Minimum Threshold

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

HHA Policy

The HHA must count assets disposed of for less than fair market value during the two years preceding certification or reexamination. The HHA will count the difference between the market value and the actual payment received in calculating total assets.

Assets disposed of as a result of foreclosure or bankruptcies are not considered to be assets disposed of for less than fair market value. Assets disposed of as a result of a divorce or separations are not considered to be assets disposed of for less than fair market value.

The HHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$3,000.

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

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

Separation or Divorce

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

HHA 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.

Family Declaration

HHA Policy

Families must sign a declaration form at initial certification and on annual recertifications identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. The HHA may verify the value of the assets disposed of if other information available to the HHA 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.

HHA Policy

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

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

In determining the anticipated income from an interest-bearing checking or savings account, the HHA 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.

HHA Policy

In determining the market value of an investment account, the HHA 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), the HHA 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 CFR 5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b)]
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]

- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

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.

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

Trusts

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

Revocable Trusts

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

Nonrevocable Trusts

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

Retirement Accounts

Company Retirement/Pension Accounts

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

HHA Policy

In determining the value of personal property held as an investment, the HHA will use the family's estimate of the value. However, the HHA 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)].

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

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

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)]. Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts are excluded from income. (Pub.L.110-289)

HHA Policy

Deferred periodic payments which have accumulated due to a dispute will be treated the same as periodic payments which are deferred due to delays in processing.

The HHA uses a prospectively calculation method depending on the circumstances.

Prospective Calculation Methodology

If the payment is reported on a timely basis, the calculation will be done prospectively and may result in an interim adjustment calculated as follows:

- At the next annual recertification, the HHA will apply the percentage balance to the lump sum and add it to the rest of the annual income.
- The lump sum will be added in the same way for any interims which occur prior to the next annual recertification change in family composition and/or families that are currently at zero income.
- If amortizing the payment over one year will cause the family to pay more than 40% of the family's adjusted income (before the lump sum was added) the Total Resident Payment, the HHA and family may enter in a Payment Agreement, with the approval of the Housing Specialist, for the balance of the amount over the 40% calculation. The beginning date for the Payment Agreement will start as soon as the one year is over.

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)]

HHA Policy

The HHA 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)].

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]

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

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements, or (4) for inadvertent overpayment [24 CFR 5.615(b)(2)].

Offsets

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

6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with an assisted family.

Alimony and Child Support

The HHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

HHA Policy

The HHA will accept verification that the family is receiving an amount less than the awarded if:

- The HHA receives verification from the agency responsible for enforcement or collection.
- The family furnishes documentation of child support or alimony collection action filed through a child support enforcement/collection agency, or has filed an enforcement or collection action through an attorney.
- It is the family's responsibility to supply a certified copy of the divorce decree.

Regular Contributions or Gifts

The HHA 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)].

HHA Policy

Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

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

Student Financial Assistance

For the Section 8 Program 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, shall be considered income to the individual, except that financial assistance described in this section is not considered income for persons over the age of 23 with dependent children. For purposes of determining income, financial assistance does not include loan proceeds.

6-I.L. 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)]
- Subject to the additional income inclusion for the HCV program on annual income for students of higher education, the full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)], except that in accordance with Section 224 of the FY 2005 Appropriations Act, the portion of any athletic scholarship assistance available for housing costs must be included in annual income [PIH Notice 2005-16].

HHA Policy

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

- 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) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
 - (g) 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)
 - (h) Subject to the annual income inclusions for the HCV Program 24 CFR 5.609 (b) (9), the amounts of scholarships funded under title IV of the Higher Education Act of 1965,

- including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu)
- (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.)
 - (kl) 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)
 - (s) The EID income exclusions as allowed for the regulations.
 - (t) The Medicare incentive payments.

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Overview

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

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
 - (i) Unreimbursed medical expenses of any elderly family or disabled family;
 - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
- (4) Any reasonable child care expenses necessary to enable a member of the family to be employed, further his or her education or seek employment.

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

Anticipating Expenses

HHA Policy

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

If a family has an accumulated debt for medical or disability assistance expenses, the HHA will include as an eligible expense the portion of the expense that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. The HHA may require the family to provide documentation of payments made in the preceding year.

6-II.B. DEPENDENT DEDUCTION

A deduction of \$480 is taken for each dependent [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

6-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, cohead, or sole member is 62 years of age or older, and it may include 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. A *disabled family* is a family whose head, spouse, cohead, or sole member is a person with disabilities and it may include two or more persons who are disabled living together, or one or more persons who are disabled living with one or more live in aides. [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 cohead is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

Definition of Medical Expenses

HUD regulations define *medical expenses* at 24 CFR 5.603(b) to mean “medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.”

HHA Policy

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

Summary of Allowable Medical Expenses from IRS Publication 502	
Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are necessary, legal, noncosmetic	Psychiatric treatment
Services of medical facilities	Ambulance services and some costs of transportation related to medical expenses
Hospitalization, long-term care, and in-home nursing services	The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor	Cost and continuing care of necessary service animals
Improvements to housing directly related to medical needs (e.g., ramps for a wheelchair, handrails)	Medical insurance premiums or the cost of a health maintenance organization (HMO)

Note: This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.

Families That Qualify for Both Medical and Disability Assistance Expenses

HHA Policy

This policy applies only to families in which the head, spouse, or cohead is 62 or older, a disabled family.

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

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

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

Earned Income Limit on the Disability Assistance Expense Deduction

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

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

HHA Policy

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, the HHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When the HHA determines the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members' earned income of the individual freed to go to work.

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 HHA to further define and describe auxiliary apparatus [VG, p. 30].

Eligible Auxiliary Apparatus

HHA Policy

Expenses incurred for maintaining or repairing an auxiliary apparatus is eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

Eligible Attendant Care

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

HHA 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, the HHA 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.

HHA Policy

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

HHA Policy

This policy applies only to families in which the head, spouse, or cohead is 62 or older, a disabled family. When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the HHA 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 families 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

HHA Policy

The family must identify the family member(s) enabled to pursue an eligible activity. The term *eligible activity* in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family's request, the HHA 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

HHA 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 or interim reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the child care expense being allowed by the HHA.

Furthering Education

HHA 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

HHA 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. Child care will be capped by the amount of earned income of the individual that is freed to work. In the case of

EID, the cap for the amount of earned income will be the amount after the EID is applied for the individual that is freed to work.

Earned Income Limit on Child Care Expense Deduction

When a family member looks for work or furthers his or her education, the cap on the amount that may be deducted for child care is established a reasonable amount as determined by the HHA. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

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

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

The HHA 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].

HHA Policy

When the child care expense being claimed is to enable a family member to work, only one family member’s income will be considered for a given period of time. When more than one family member works during a given period, the HHA generally will limit allowable child care expenses to the earned income of the individual that is freed to go to work.

Eligible Child Care Expenses

The type of care to be provided is determined by the assisted family. The HHA 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

HHA Policy

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

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

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the HHA 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.

HHA Policy

The number of hours claimed for child care may not exceed the number of hours the family member is attending school, including reasonable travel time to and from school.

PART III: CALCULATING FAMILY SHARE AND HHA 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)
- A minimum rent between \$0 and \$50 that is established by the HHA

The HHA 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]

HHA Policy

Welfare rent does not apply in this locality.

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

The minimum rent for this locality is \$50.00.

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

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

HHA Subsidy [24 CFR 982.505(b)]

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

HHA Policy

The HHA will make utility reimbursements directly to the utility supplier.

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

The financial hardship rules described below do apply in this jurisdiction because the HHA has established a minimum rent of \$50.00.

Overview

If the HHA establishes a minimum rent greater than zero, the HHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the HHA 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.

HHA Policy

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

- (2) The family would be evicted because it is unable to pay the minimum rent.

HHA Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities.

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.
- (4) A death has occurred in the family.

HHA Policy

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

- (5) The family has experienced other circumstances determined by the HHA.

HHA Policy

The HHA has not established any additional hardship criteria.

Implementation of Hardship Exemption

Determination of Hardship

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

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

HHA Policy

The HHA 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 HHA has established a minimum rent of \$35.	
Family Share – No Hardship	With Hardship
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$35 Minimum rent	\$35 Minimum rent
Minimum rent applies. TTP = \$35	Hardship exemption granted. TTP = \$15

HHA Policy

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family’s ability to pay the minimum rent.

The HHA will make the determination of hardship within 30 calendar days.

No Financial Hardship

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

HHA Policy

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

Temporary Hardship

If the HHA determines that a qualifying financial hardship is temporary, the HHA must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family's request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay the HHA the amounts suspended. HUD requires the HHA to offer a reasonable repayment agreement, on terms and conditions established by the HHA. The HHA also may determine that circumstances have changed and the hardship is now a long-term hardship.

HHA Policy

The HHA will enter into a repayment agreement in accordance with the procedures found in Chapter 14 of this plan.

Long-Term Hardship

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

HHA 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**

The HHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the HHA's payment standards. The establishment and revision of the HHA's payment standard schedule are covered in Chapter 11.

Payment standard is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [24 CFR 982.4(b)].

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the HHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

If the HHA 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, the HHA must use the appropriate payment standard for the exception area.

The HHA 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 HHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

Changes in Payment Standards

When the HHA revises its payment standards during the term of the HAP contract for a family's unit, it will apply the new payment standards in accordance with HUD regulations.

Decreases

If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard generally will be used beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard. The HHA will determine the payment standard for the family as follows:

HHA Policy

Board Approved November 29, 2016

If the payment standard amount has decreased, the decreased payment standard for families under a housing assistance payment (HAP) contract at the time of the decrease in the payment standard, the previous higher payment standard will continue to be applied for the family's subsidy calculation for as long as the family continues to receive voucher assistance in that unit under the existing HAP contract and there are no changes to the household composition. All other family subsidy calculation procedures remain the same.

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, the HHA is allowed to establish a higher payment standard for the family within the basic range (90-110 percent). If a family requests a higher payment standard above the basic range HUD approval is required as a reasonable accommodation.

HHA Policy

During Annual Re-examination the HHA will review each accommodation. If the family no longer requires such accommodation, then the HHA will no longer grant the accommodation. Example, if at lease up a family requires a reasonable accommodation to increase the Payment standard in order to qualify for a unit and the accommodation was granted. Then during the Annual Re-examination if the family no longer requires the increase in payment standard do to changes in income, deductions, etc. the accommodation will be removed.

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

A HHA-established utility allowance schedule is used in determining family share and HHA subsidy. The HHA must use the appropriate utility allowance for the size of the voucher for which the family qualifies using HHA subsidy standards irrespective of the size of unit the family chooses to rent. See Chapter 5 for information on the HHA's subsidy standards.

For policies on establishing and updating utility allowances, see Chapter 11.

Reasonable Accommodation

HCV program regulations require a HHA to approve a utility allowance amount higher than shown on the HHA's schedule if a higher allowance is needed as a reasonable accommodation

for a family member with a disability. For example, if a family member with a disability requires such an accommodation for air-conditioning, the HHA will approve an allowance for air-conditioning, even if the HHA has determined that an allowance for air-conditioning generally is not needed.

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

HHA Policy

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first next interim or 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. The HHA must prorate the assistance provided to a mixed family. The HHA 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 HHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, the HHA subsidy would be reduced to \$250.

EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS**24 CFR 5.609**

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

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

(b) Annual income includes, but is not limited to:

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

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

- (6) Welfare assistance payments.
 - (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
 - (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31¹; and
 - (B) Are not otherwise excluded under paragraph (c) of this section.
 - (ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
 - (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - (B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
- (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
- (8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)
- (9) For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for

¹ Text of 45 CFR 260.31 follows.

tuition, that an individual receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education, shall be considered income to the individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

**HHA 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).
- (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) Nonrecurrent, short-term benefits that:
- (i) Are designed to deal with a specific crisis situation or episode of need;
 - (ii) Are not intended to meet recurrent or ongoing needs; and
 - (iii) Will not extend beyond four months.
- (2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
- (3) Supportive services such as 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.

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS
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24 CFR 5.609

(c) Annual income does not include the following:

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| <p>(1) Income from employment of children (including foster children) under the age of 18 years;</p> <p>(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);</p> <p>(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);</p> <p>(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;</p> <p>(5) Income of a live-in aide, as defined in Sec. 5.403;</p> <p>(6) Subject to paragraph (b) (9) of the inclusions, the full amount of student financial assistance paid directly to the student or to the educational institution;</p> <p>(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;</p> <p>(8) (i) Amounts received under training programs funded by HUD;</p> <p>(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they</p> | <p>are set aside for use under a Plan to Attain Self-Sufficiency (PASS);</p> <p>(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;</p> <p>(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 HHA 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 HHA's governing board. No resident may receive more than one such stipend during the same period of time;</p> <p>(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;</p> <p>(9) Temporary, nonrecurring or sporadic income (including gifts);</p> |
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- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) [Reserved]
- (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
- (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
- (16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

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);

Sources of Income Excluded by Federal Statute from Consideration as Income

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS**24 CFR 5.603(b) Net Family Assets**

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

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

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

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES
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24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) Applicable programs. The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) Definitions. The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment?

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least \$500.

(c) Disallowance of increase in annual income—

(1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve month exclusion and phase-in. During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Maximum four year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) Inapplicability to admission. The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615**Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

(a) Applicability. This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) Definitions. The following definitions apply for purposes of this section:

Covered families. Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at Sec. 5.603.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income.

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) Review of PHA decision.

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the

basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) PHA relation with welfare agency.

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.