



**Department of  
Housing Preservation  
& Development**

**Department of Housing Preservation and Development  
Housing Choice Voucher Program**

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**Administrative Plan**

**April 15, 2016**

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

### **1.1 Overview of HPD's Voucher Program**

The New York City Department of Housing Preservation and Development (HPD) is organized under the Charter of the City of New York and New York State enabling legislation. A Commissioner who is appointed by the Mayor and confirmed by the City Council of New York City is the authorized official who governs the agency. The overall mission of HPD is to improve the availability, affordability and quality of housing in New York City (NYC) through a variety of preservation, development and enforcement strategies. The Housing Choice Voucher (HCV) program plays an important role in this mission.

HPD's jurisdiction for the voucher program covers the five boroughs of NYC. The program complements the one administered by the New York City Housing Authority (NYCHA). The NYCHA program is available to all low-income households in New York City who qualify for Housing Choice Voucher assistance; HPD's program is intended to serve specific categories of low-income households who are affected by, or participate in, HPD or other government agency programs and consequently face special circumstances. Both HPD and NYCHA are designated Public Housing Agencies (PHAs); households in NYC can apply for vouchers from both programs but may receive assistance from one only agency.

A major emphasis of HPD's voucher program is to supplement development activities that improve the quality of low-income housing. Under certain initiatives, HPD issues a voucher to eligible families for relocation activities associated with the substantial renovation of low-income housing. In others, HPD assists eligible families that reside in properties that have been recently renovated with HPD loans but where the newly restructured rent causes a financial hardship. HPD also offers Housing Choice Voucher assistance to families who previously benefited from the agency's development programs but who maintain a significant rent burden that places them in a precarious housing situation. In all of these instances, Housing Choice Vouchers are a critical resource in preventing the displacement and potential homelessness of low-income households from revitalized neighborhoods.

The voucher program also partners with other government agencies and divisions within HPD to assist special needs populations, including homeless clients from shelters operated by HPD, the Department of Homeless Services (DHS) and the Human Resource Administration (HRA).

Pursuant to special contracts offered by HUD, HPD also issues enhanced vouchers to families affected by a housing conversion action. These actions occur when a private property owner opts out of a project-based contract or prepays or refinances an existing federal mortgage and converts the property to market rate housing. Enhanced vouchers permit a special payment standard which exceeds the normally applicable payment standards, so long as the family remains in the development. Accordingly, these special contracts are funded at higher levels than standard vouchers. The use of enhanced vouchers by HPD has become a critical tool in preserving affordable housing opportunities for many of the City's Mitchell-Lama residents.

Finally, HPD uses vouchers to address unique and critical local housing needs resulting from unforeseen catastrophes such as the September 11th attacks and other emergency situations.

HPD administers the Housing Choice Voucher program in conformance with 24 CFR Part 5, 903, 982 and 985, the Housing Act of 1937, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and its subsequent amendments, and Title II of the Americans with Disabilities Act. HPD affirmatively furthers fair housing in the administration of the HCV program.

## **1.2 Purpose of the Administrative Plan**

The purpose of the Administrative Plan is to establish HPD's policies for carrying out the Housing Choice Voucher program in a manner consistent with HUD requirements as well as local goals and objectives contained in the Agency Plan/PHA Annual Plan. All issues related to the HCV program that are not addressed in this document are governed by federal regulations, HUD memos, notices and guidelines and state and local law.

This administrative plan is a supporting document to the Agency Plan, and is available for public review as required by 24 CFR Part 903.

## **1.3 Covered Programs**

HPD administers the Housing Choice Voucher program (regular and enhanced vouchers, FSS, and Section 8 Homeownership, project-based vouchers), the Section 8 Moderate Rehabilitation program (Mod Rehab), the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) program and the Shelter Plus Care program. The policies described herein apply to all four programs, except in specified cases, such as enhanced vouchers, project-based vouchers and Mod Rehab where some special rules pertain.

### **1.3.1 Project-Based Vouchers**

Per 24 CFR 983.51(b)(2), HPD will convert up to 20% of its Housing Choice Vouchers into project-based vouchers (PBV). When determining which units to offer project-based voucher assistance, HPD will target resources to projects previously selected under one or more of HPD's housing assistance program competitions such as the 60/40 supportive housing projects. HPD may also issue Requests for Proposals for project-based vouchers. Applicants to the program will be referred by a project-based voucher development sponsor for placement on the PBV waiting list. Residents leaving project-based units will be offered a place at the top of the waiting list for a tenant-based voucher. (See Chapter 21: Project-Based Vouchers)

### **1.3.2 Section 8 Moderate Rehabilitation Program**

The Moderate Rehabilitation (Mod Rehab) program is governed by federal statute, regulations at 24 CFR Part 882 and the housing assistance payments contract for the program. The Mod-Rehab program provides project-based rental assistance for low-income families. The U.S. Congress repealed the program in 1991 and no new projects have been authorized for development since then.

### **1.3.3 The Section 8 Moderate Rehabilitation SRO Program for Homeless Individuals**

The Moderate Rehabilitation SRO program is authorized by the McKinney-Vento Homeless Assistance Act and governed by regulations at 24 CFR Part 882. Through this project-based program, HPD makes rental assistance payments to non-profit and for-profit homeless housing providers on behalf of eligible homeless individuals.

### **1.3.4 The Shelter Plus Care Program**

The Shelter Plus Care Program is authorized by the McKinney-Vento Homeless Assistance Act and governed by federal regulations at 24 CFR Part 582 and the HAP contract for the program. The program provides rental assistance for hard-to-serve homeless persons with disabilities in connection with supportive services funded from sources outside the program.

## **1.4 Changes to the Administrative Plan**

HPD is responsible for complying with all changes in HUD regulations pertaining to the voucher program. If such changes conflict with this plan, HUD regulations will have precedence, and HPD will revise this plan accordingly. On an ongoing basis, HPD may make minor, non-substantive modifications to the Administrative Plan in order to clarify existing policies and procedures and/or to correct editing errors.

The original plan and any proposed changes must be approved by the Commissioner of HPD, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

## **2 FAIR HOUSING AND EQUAL OPPORTUNITY**

### **2.1 Nondiscrimination**

It is HPD's policy to fully comply with federal, state and local nondiscrimination laws and with the rules and regulations which govern Fair Housing and Equal Opportunity in housing and employment.

HPD shall not deny any family or individual the equal opportunity to apply for or receive assistance under the Housing Choice Voucher program on the basis of race, color, sex, religion, creed, national or ethnic origin, age, familial or marital status, handicap or disability, sexual orientation, gender identity, source of income, prior record of arrest or conviction, or status as a victim of domestic violence, dating violence, sexual assault, or stalking.

To further its commitment to full compliance with applicable Civil Rights laws, HPD will provide federal, state and local information to voucher holders regarding unlawful discrimination and any recourse available to families who believe they are victims of a discriminatory act. Such information will be made available during the family briefing session and all applicable Fair Housing Information and Discrimination Complaint forms will be made a part of the voucher holder's briefing packet. Fair Housing posters are displayed throughout HPD's offices, and staff will attend Fair Housing training courses as deemed necessary.

#### **2.1.1 Discrimination Complaints**

In the event that a person alleges discrimination in their housing search, the case will be forwarded to the Law Enforcement Bureau of the NYC Commission on Human Rights. . Staff in this office will assist the client in filing a HUD-903 form and will conduct an investigation into the matter.

New York City's Local Law 10 of 2008 prohibits owners of buildings with six or more units from discriminating against tenants or applicants for housing based upon lawful sources of income, which includes a Section 8 voucher. HPD's briefing booklet and posters in the Client Services area inform Section 8 participants that they may file complaints with the Law Enforcement Bureau of the City's Commission on Human Rights.

Depending on the nature of the complaint, HPD may suspend the voucher term from the date that the complaint was made. A suspension of the voucher means the clock is stopped during the suspension period. For example, if a 120-day voucher is suspended for a period of 10 days, the total life of that voucher would be extended to 130 days.

## 2.2 Affirmatively Furthering Fair Housing

HPD, with the assistance of other New York City agencies, identifies impediments to fair housing choice as described in the five-year Affirmatively Furthering Market Housing (AFFH) statement submitted by the City of New York to HUD/FHEO. The New York City Consolidated Plan identifies activities undertaken by HPD to examine its programs to identify and overcome impediments to fair housing. Examples of these activities include contracting with local nonprofit organizations for fair housing counseling, reviewing fair housing marketing plans, and providing trainings. HPD reaffirms its commitment to correct the effects of any impediments to fair housing. The identified impediments to fair housing include: residential segregation by race and ethnicity, discrimination by some housing industry entities, addressing the needs of an increasing local immigrant population and the unique needs of the approximately 1.9 million New Yorkers with disabilities.

HPD addresses identified impediments to fair housing through efforts to preserve, upgrade, develop and make accessible affordable housing for all New Yorkers. HPD acts as a catalyst for private sector investment and the economic revitalization of local communities with the greatest needs. HPD provides loans and other financial assistance, enforces housing quality standards, maximizes local management and ownership of City-owned residential buildings and provides Section 8 assistance for homeless and low-income individuals and families. In addition:

- HPD is committed to the policy of promoting fair housing to achieve the inclusion of individuals and families of all racial and ethnic groups as tenants and/or buyers in all publicly funded or assisted projects in accordance with applicable federal, state and local fair housing laws.
- HPD loan recipients are required to comply with Affirmative Fair Housing Marketing Regulations. Recipients submit marketing plans that detail the strategies to be employed to attract all prospective tenants, including the least likely to apply, in a nondiscriminatory manner. These documents require that the recipients attest to their awareness of applicable fair housing laws. Recipients are also required to maintain records that describe the strategies undertaken and their results, including an ethnic/gender breakdown of all occupants.
- HPD is one of a number of agencies that investigates and refers housing discrimination. Clients who wish to make fair housing complaints are directed to the U.S. Department of Housing and Urban Development Housing Discrimination hotline (1-800-669-9777).
- As addressed in Sections 2.3 of this chapter of the HPD's Administrative Plan, HPD makes reasonable accommodations to people with disabilities to ensure that they may fully access and use the voucher program and related services. Families must request a reasonable accommodation from HPD. HPD will review each request submitted. HPD will take affirmative steps to communicate with people who need services or information in a language other than English.

### **2.3 Reasonable Accommodations for Persons with Disabilities**

HPD's policies and practices will make reasonable accommodations for persons with disabilities to ensure that they may fully access and use the voucher program and related services. The opportunity for requesting an accommodation will be provided on the Housing Choice Voucher application and other forms or letters. This policy is intended to afford persons with disabilities equal opportunity to obtain the same results and gain the same benefits as those who do not have disabilities, and is applicable to all situations described in this plan.

Reasonable accommodation will be made only after applicants or participants with a disability request a change to HPD's generally applicable policies or practices. To be eligible to request reasonable accommodation, the individual making the request must first certify (if apparent) or verify (if not apparent) that they are a person with a disability under the applicable definitions in the Fair Housing Amendments Act of 1988, Section 504 of the 1973 Rehabilitation Act, and the Americans with Disabilities Act.

A family must request a reasonable accommodation by completing a Reasonable Accommodation Request form or submitting a letter from a medical professional. This form must be completed by a licensed medical professional to verify the person's disability and need for the reasonable accommodation. HPD will review all requests and make a determination to approve or deny based on the information provided. In accordance with federal law, if the need for the accommodation is not readily apparent, the medical professional must explain the relationship between the requested accommodation and the disability. In order for HPD to approve a reasonable accommodation, there must be an identifiable relationship between the requested accommodation and the individual's disability. HPD reserves the right to require that reasonable accommodation requests are resubmitted annually.

HPD may deny the request if it will cause an undue financial or administrative burden, or will change the fundamental nature of the program. Applicants and participants will be notified by mail.

HPD will provide reasonable search time and extensions to families with disabled persons so that they may locate housing to meet their needs. Reasonable search time will be defined by HPD, but shall not be indefinite.

### **2.4 Improving Access to Services for Persons with Limited English Proficiency**

HPD will comply with the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published January 2007, 72 *Federal Register* 2733,2744) in addition to Executive Order 120 and 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).

In determining whether it is feasible to provide translation of documents written in English into other languages, HPD will consider the following factors:

- The number of applicants and participants in the jurisdiction who do not speak English and speak a different language;
- The estimated cost to HPD, per client, of the translation of documents into other languages; and
- The availability of local organizations or City government staff to provide translation to non-English speaking families.

## **2.5 Violence Against Women Act (VAWA)**

### **2.5.1 Terminating or Denying Assistance to Domestic Violence, Dating Violence or Stalking Victims and Offenders**

The Violence Against Women Reauthorization Act of 2013 (VAWA) provides that “An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.”

HPD may exercise its authority to “terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant.”

VAWA does not limit HPD’s authority to terminate or deny the assistance of any participant or applicant if HPD “can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance.”

### **2.5.2 Victim Documentation**

When a participant family is facing termination of subsidy or an applicant family is facing denial of assistance because of the actions of a participant, household member, guest, or other person under the participant’s control and a participant or individual affiliated with the participant claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, sexual assault, or stalking, HPD will require the individual to submit documentation affirming that claim. An affiliated individual is a spouse, parent, brother, sister, or child of that individual or an individual to whom that individual stands in loco parentis, or any individual, tenant, or lawful occupant living in the household that individual.

HPD will accept one of three methods for certification of a claim:

- A completed HUD form 50066; and/or

- A federal, state, tribal or territorial or local police or court record; and/or
- Documentation signed and attested to by a qualified third party, including a victim service provider or medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, in which the professional attests to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of the violence, assault, or stalking has signed or attested to the documentation.

The required certification and supporting documentation must be submitted to HPD within 14 calendar days after HPD issues its written request. The 14-day deadline may be extended at HPD's discretion. HPD will hold the termination/denial action until the end of the deadline. HPD reserves the right to require additional documentation if the original documentation is not sufficient for HPD to make a determination of the request (ex: emergency move, transfer of voucher from head of household to family member). If the individual does not provide the required certification and supporting documentation within 14 calendar days, or the approved extension period, HPD may proceed with the original termination/denial of assistance reason.

### **2.5.3 Terminating or Denying Assistance to a Domestic Violence Offender**

Although VAWA provides termination protection for victims of domestic violence, it does not provide protection for offenders. HPD may exercise its explicit authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against affiliated individual or other individual' ...without terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant." This authority supersedes any local, state, or other federal law to the contrary. However, if HPD chooses to exercise this authority, HPD will follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance [Pub.L. 109-271]. HPD may similarly deny assistance to an applicant household with an offender.

When the actions of a participant, applicant, or other family member result in a decision to terminate the family's assistance or deny assistance and another family member claims that the actions involve criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individuals, HPD will request that the victim submit the required certification and supporting documentation in accordance with the stated timeframe. If the victim submits the certification and supporting documentation within the required timeframe, or any approved extension period, HPD will terminate or deny the offender's assistance. If the victim does not provide the certification and supporting documentation, as required, HPD will proceed with termination or denial of the entire family's assistance.

If HPD can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the participant's tenancy is not terminated or the applicant's subsidy is not denied, HPD will bypass the standard process and proceed with the immediate termination or denial of the family's assistance.

#### **2.5.4 Portability**

HPD may provide a voucher and allow a move in violation of the lease under portability procedures if the family has complied with all other obligations of the voucher program and has moved out of the assisted unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believes that he or she is imminently threatened by harm from further violence if he or she remains in the assisted unit.

#### **2.5.5 Confidentiality Requirements**

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

#### **2.6 Promoting Deconcentration**

To promote deconcentration of low-income families, HPD will encourage property owners outside of areas of minority or poverty concentration to participate in the HCV program.

Using data from the U.S. Census Bureau and HPD's Housing and Vacancy Survey, the agency will obtain information on areas in its jurisdiction and neighboring jurisdictions that are not poverty or minority concentrated. This data will be organized by community or neighborhood boundaries for easier understanding by HCV clients. Once the areas of opportunity are identified, HPD will perform outreach activities to property owners to encourage them to participate in the program.

Examples may include:

- Placing advertisements in local or neighborhood-based newspapers;
- Coordinating with local real estate boards and organizations;
- Meeting with relevant community and business associations; or
- Meeting with elected officials to explain the benefits of the program and to seek outreach assistance.

Within the constraints of the Fair Market Rent-based system, HPD will make concerted efforts to coordinate outreach efforts in areas of non-minority/non-poverty concentration with community groups and/or organizations engaged in fair housing issues and community development activities. Based on the most recent available census data (2010), areas of HPD's jurisdiction that would promote deconcentration for HCV clients and are within a reasonable rent range of HPD's payment standards include the following:

**Bronx:** Baychester/Eastchester, Kingsbridge/Marble Hill, Pelham Gardens, Pelham Parkway and Throgs Neck/Edgewater Park

**Brooklyn:** Canarsie and Flatlands

**Queens:** Queens Village, Cambria Heights, Rosedale, Forest Hills, Rego Park, Corona, Ozone Park, and Howard Beach

**Staten Island:** Tottenville, Great Kills, New Springville and South Beach

Outside HPD's Jurisdiction: Cities outside of HPD's jurisdiction in nearby Westchester and Nassau counties maintain expanded housing opportunities for HPD's voucher holders.

Areas of poverty and minority concentration within and outside of HPD's jurisdiction are outlined on a map of the city that is included in the briefing booklet. A listing of high opportunity areas in neighboring jurisdictions will be provided at briefings.

At the voucher briefing, families are encouraged to search for housing outside areas of poverty and minority concentration areas. On occasion, HPD will investigate and analyze when voucher holders are experiencing difficulties locating or obtaining housing units outside areas of concentration and will consider additional outreach strategies, including exception payment standards, to ameliorate the situation.

### **3 LOCAL PREFERENCES AND SPECIAL ADMISSIONS**

#### **3.1 Local Preferences**

Federal regulations permit a housing authority to establish a system of preferences for the selection of families admitted to the program. The system must be based on local housing needs and priorities as determined by the PHA.

HPD may change these preferences to respond to changes in local housing needs or emergency housing situations. When changes are made, HPD will offer an opportunity for public comment as part of the Agency Plan approval processes.

HPD will verify all preference claims at the time the application is reviewed. Staff may re-verify a preference claim if they believe the family's circumstances have changed at the time of selection from the waiting list.

HPD's preferences are summarized below:

- Homeless Households and Programs for Near Homeless, including SRO Re-Rentals and Special Needs Housing
- HPD Building Renovation Households – Relocation
- HPD Building Renovation Households – Rent Restructuring
- In Place Households with Rent Burdens - Homeless Housing and Special Needs Housing
- In Place Households with Rent Burdens - Homeless Prevention Strategies
- HPD Pilot Programs for the Expansion of Affordable Housing
- Households in Special Circumstances

#### **Homeless Households and Programs for Near Homeless, including SRO Re-Rentals and Special Needs Housing:**

- 1) Households that have a primary nighttime residence that is either:
  - a) A publicly or privately-operated homeless shelter in HPD's jurisdiction designed to provide temporary living accommodation, including shelters operated by DHS and designated by HPD to receive HCV assistance for its clients; or
  - b) The home of another household in HPD's jurisdiction that is allowing the applicant to reside temporarily, provided that the applicant has been classified as homeless by HPD's Emergency Housing Services Bureau.

In order to qualify for this preference, a household must maintain their eligibility for homeless assistance as certified by the responsible government agency administering the shelter assistance.

- 2) Households that maintain a precarious permanent housing situation, as certified by a government agency including HPD and HRA, which puts them at risk of becoming homeless. Examples include families whose short term subsidy will end imminently.

**HPD Building Renovation Households – Relocation:**

Households that reside in a building that is in need of substantial renovation and is either owned by the City of New York or an entity designated by the City to achieve its housing goals, or is part of the City’s housing preservation efforts. The voucher will be issued to allow the applicant to locate permanent, alternate housing.

**HPD Building Renovation Households – Rent Restructuring:**

Households that reside in buildings that have been or will be recently renovated with financial assistance from HPD (generally within 12 months from the date of application) which result in rent increases that cause rent hardship to the applicant. Rent hardship is defined as paying more than 30% of gross income toward rent, plus utilities not included in the rent.

**In Place Households with Rent Burdens - Homeless Housing and Special Needs Housing:**

Households from HPD homeless and special needs housing programs that maintain a rent burden of more than 30% of annual household income toward rent plus utilities not included in the rent.

Applications received under this preference must be referred by HPD program staff, or a designated program sponsor, and represent a household that has relocated from a homeless shelter within 24 months preceding the date of the application.

**In Place Households with Rent Burdens - Homeless Prevention Strategies:**

Households that maintain a rent burden of more than 30% of annual household income toward rent plus utilities not included in the rent, and reside in buildings that were developed in the past with financial assistance from HPD, or buildings for which HPD maintains a regulatory agreement governing the operation of the building. Applications received under this preference must be referred by HPD program staff, or a designated program sponsor, and represent a building that has been identified by the agency to receive Housing Choice Voucher assistance for its eligible residents.

**Households in Special Circumstances:**

Households are in circumstances that present an imminent risk to their life, health or safety, and where Housing Choice Voucher assistance is the primary mechanism for remedying the emergency situation and/or households in other housing emergency circumstances. Only a very limited number of admissions each year will be made under this preference category, based on voucher availability. Special circumstance cases require submission of a written petition by the applicant or advocate along with documentation of the special circumstance, and must have the written approval of the First Deputy Commissioner, Deputy Commissioner, or the Assistant Commissioner of the Division of Tenant Resources.

**HPD Pilot Programs for the Expansion of Affordable Housing:**

Households participating in pilot programs developed by the agency to increase the supply of affordable housing or housing designated for special needs populations through the provision of Housing Choice Voucher rental assistance.

The table below presents some examples of government-administered programs that correspond to each local preference.

<b>Preference</b>	<b>HPD/ Example Agency Programs</b>
Homeless Households and Programs for Near Homeless	Client and Housing Services SRO Human Resources Administration Domestic Violence Homeless Placement Services
HPD Building Renovation – Relocation	Third Party Transfer Multi-family Preservation Loan Program Affordable Neighborhood Cooperative Program
HPD Building Renovation – Rent Restructuring	Affordable Neighborhood Cooperative Program Housing Rehabilitation Program Third Party Transfer Year 15 Participation Loan Program Multi-family Preservation Loan Program
In Place – Homeless and Special Needs Housing	SRO
In Place – Homeless Prevention Strategies – Households with Rent Burden	Mitchell Lama Rent Burden; Coop and Rental Asset Management Year 15 Third Party Transfer Participation Loan Program
Special Circumstances	Emergencies

Per HUD regulations, a Project-Based Voucher program participant who is eligible to move with continued assistance will receive absolute preference for the next available Housing Choice Voucher.

### **3.2 Special Admission Programs**

HPD will assist families who do not qualify for other local preferences when HUD awards funding which targets certain categories of families. Special admission families will be admitted through a special process. They do not have to qualify for any local preferences, nor are they required to previously be on the HCV program’s single waiting list. HPD maintains separate records of these admissions. HPD will use such targeted funding in accordance with the conditions imposed when funds are awarded and accepted. Turnover vouchers (i.e., vouchers recycled when an existing participant leaves the program) for all below special admission programs will be converted to regular Housing Choice Vouchers and distributed to applicants in accordance with the agency’s regular selection policy.

The following special admission programs are administered by HPD:

#### **3.2.1 Enhanced Vouchers**

HPD uses enhanced vouchers to preserve housing units that might otherwise be lost due to housing conversion actions such as mortgage prepayments, project-based opt-

outs, some HUD enforcement actions, and HUD property disposition. Enhanced vouchers are a type of Tenant Protection Voucher also known as “sticky” vouchers because the enhanced assistance only applies if the voucher holder stays in the conversion project. If the family moves outside the development, the voucher reverts to a regular housing choice voucher and the regular HCV program rules apply. (See separate chapter on Enhanced Vouchers for more information).

### **3.2.2 Rental Assistance Demonstration (RAD) Tenant Protection Vouchers**

Through the FY13 Appropriation, Congress created RAD to enable certain eligible projects to convert Tenant Protection Vouchers into project based vouchers or project based rental assistance at conversion. Project eligibility criteria are determined by the RAD Final Implementation Notice Revision 1 issued by HUD on July 2, 2013. HPD will administer the program in conformance with that notice and any subsequent guidance provided by HUD. In the areas HPD has discretion in implementation of the program, HPD policy is laid out below:

- Eligible project based voucher units under RAD will have an income limit (for initial eligibility determination) of 80% of the Area Median Income. Upon unit turnover, eligibility for these PBV units will have an income limit of 50% of the Area Median Income.

In all other ways, the program will be administered as the Project Based Voucher program is administered unless HUD provides explicit guidance indicating variance from PBV regulations.

### **3.2.3 Welfare-to-Work**

HPD no longer accepts new applicants in the Welfare-to-Work program, but families already utilizing welfare-to-work vouchers remain in the program. Welfare-to-work voucher families were those who, upon admission were 1) residing in a city-owned building or a homeless shelter operated by HPD or HRA; 2) were receiving TANF assistance or were eligible to receive TANF assistance within the previous two years from the date of application for Housing Choice Vouchers; and 3) were able to demonstrate that Housing Choice Voucher assistance was critical to the success of an adult household member obtaining or retaining employment.

### **3.2.4 Mainstream Vouchers**

Mainstream vouchers enable non-elderly families having a person with disabilities to lease affordable private housing of their choice. HPD may accept new applicants for the Mainstream voucher program based on funding availability.

### **3.2.5 HUD Veterans Administration Supportive Housing (VASH) Program**

HUD VASH vouchers enable veterans who are homeless as defined by the McKinney Vento Homeless Assistance Act. The Veterans Administration (VA) Medical centers in New York City will determine program eligibility for households and refer eligible households to HPD. Turn-over vouchers are dedicated to house other VA referred eligible households. Unless waived by HUD regulations, the program will operate with similar procedures as the HCV program. HCV regulatory requirements modified for VASH program participants include, but are not limited to:

- Waiver of screening requirements for criminal background or debts owed to PHAs;
- Addition of VA case management compliance for continued eligibility in the program;
- VASH participants may port (transfer) outside of HPD's jurisdiction only to another PHA where VA case management may be completed;
- VASH voucher holders have at least 120 days to search for a unit;
- In the case of a family break-up at any time during program participation and application, the VASH voucher will remain with the Veteran; and
- Extension of voucher term may require consent of HUD VASH Coordinators.

In addition to these modifications, HPD will coordinate closely with HUD VASH case managers as a means of providing reasonable accommodation in cases where there is a risk of termination from the program. HPD may accept new applicants for the VASH program based on funding and turn-over voucher availability. In accordance with program requirements and with HUD and VA approval, HPD may convert its allocation of VASH tenant based vouchers to project based vouchers.

HPD will administer a HUD VASH project based voucher program. This program will be administered as described in Chapter 21 of this Plan except for differences as outlined the Federal Register as published on 5/23/2012.

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

### **4.1 The Application Process**

#### **4.1.1 Outreach to Tenants**

HPD will employ staff from different divisions within the agency, management staff from various housing providers, and staff from other governmental agencies to perform outreach to households that may qualify for one of the applicant preferences identified in this plan. These intermediaries will assist families with completing their Housing Choice Voucher applications and facilitate the vouchering and leasing process for HPD. Outreach will be a comprehensive effort that involves coordination with a variety of service providers, HPD case management staff, and print advertising. All outreach activities will be performed in English, Spanish, and other languages, as appropriate. HPD will provide reasonable accommodation for applicants with disabilities known to HPD who are unable to visit the office, such as home visits or phone briefings. HPD will only accept applications through HPD programs (see page 1-1, Overview of HPD's Voucher Program), and as designated by special projects.

#### **4.1.2 Advertising**

HPD will advertise the opening and closing of the waiting list as required by 24 CFR Part 982. These advertisements will be placed in English and Spanish language publications throughout HPD's jurisdiction and will include an Equal Opportunity logo and non-discrimination statement in the advertising message.

#### **4.1.3 Service Provider Strategies**

HPD will coordinate with a variety of homeless shelter administrators, non-profit and for profit housing providers, and community-based organizations to identify households who may qualify for Housing Choice Voucher assistance and to help with the application process and submission. HPD will conduct regular training sessions with service providers on application requirements.

#### **4.1.4 Application Format**

During periods when the wait for Housing Choice Voucher assistance is shorter than 12 months, HPD will require that applicants submit a full application and all supporting documentation in order to be placed on the waiting list. Alternately, HPD will institute a preliminary application process during periods when the wait for assistance is longer than 12 months.

Applications must contain the following information:

- A completed HPD Housing Choice Voucher Application for Rental Assistance;
- Proof of all income and assets in accordance with 24 CFR Part 5;
- Proof of social security numbers for all members of the household;

- Proof of age for all members of the household;
- A signed declaration of citizenship or proof of eligible immigration status for every family member (HPD may request further documents in accordance with 24 CFR Part 5);
- Documentation of allowable expenses in accordance with 24 CFR Part 5;
- Release of Information Authorization (Federal Privacy Act Notice);
- Debts Owed to Public Housing Agencies and Terminations form;
- Absent Parent Affidavit(s), if applicable;
- Declaration Package;
- Any other information that HPD deems necessary to determine program eligibility in conformance with applicable statute, regulation and HUD notices.

Additionally, applicants may submit an Optional Supplement to Application for Federally Assisted Housing Form.

Participants in a rental subsidy program administered by HPD's Division of Tenant Resources may submit an abridged application if they were participants within the past five years. This application will consist of an annual recertification package and a simplified one page application for the Housing Choice Voucher program. Examples of such programs include HOME TBRA, Temporary Disaster Assistance Program and TDAP –Private. These applicants are not exempt from attending a mandatory briefing for the Housing Choice Voucher program.

If any applicant family misrepresents the information on which eligibility or tenant rent is established, HPD may deny assistance and may refer the family file or record to the HPD Inspector General for appropriate action.

#### **4.1.5 Application Submission**

All applications are submitted through the intermediaries in Chapter 3-Preferences of the Administrative Plan and as designated by special projects. HPD will return all incomplete applications to the applicant, through the intermediary. For programs with no intermediary, HPD will return the application to the family with a letter outlining the missing items and a deadline by which the items must be returned.

After public notice of the Agency's local preferences and the application submission process, HPD will discard all applications that are not submitted through a designated intermediary and applications that do not meet a local preference category.

### **4.2 Waiting List**

#### **4.2.1 Waiting List Organization and Management**

When a complete application is submitted to HPD it establishes the family's date and time of application for placement order on the waiting list. While a family is on the waiting list, the family must immediately inform HPD of changes in contact information, including current residence, mailing address and phone number and change in preference status, family composition and income.

HPD will maintain a single waiting list for the tenant-based program, and separate waiting lists for projects using project-based vouchers. HPD will offer all applicants for tenant-based voucher assistance the opportunity to be placed on the PBV waiting list at the time of application. Criteria for occupancy of particular units will be established based on the services provided by the development.

An applicant does not have any right or entitlement to be listed on HPD's waiting list, to any particular position on the waiting list, or to admission to the program. Applications received which HPD determines unqualified for a local preference will not be placed on the waiting list. Applicants will be notified in writing of their denials of assistance. Families have the right to have the decision reviewed if they make the requests in a timely manner and provide evidence of their qualification for a local preference category. HPD may also deny admission to the waiting list due to an action or inaction by any family member, as permitted by federal regulation, such as violent drug-related criminal activity.

#### **4.2.2 Multiple Families in the Same Household**

Households consisting of two families living together will be treated as one household if they apply as one family unit.

#### **4.2.3 Split Households Prior to Subsidy Start**

Prior to receiving subsidy, when an applicant family splits into two otherwise eligible families due to divorce or separation, and the new families both claim rights to apply for subsidy, HPD will decide who shall retain the right to apply for the subsidy (unless there is a court determination) based on factors including but not limited to::

- Which family member applied as head of household;
- Which family unit retains the children or any disabled or elderly members;
- Restrictions that were in place at the time the family applied;
- Role of domestic violence in the split;
- The role of criminal activity or incarceration; and
- Recommendations of social service agencies or qualified professionals such as child protective services.

Documentation of these factors is the responsibility of the applicant families. If either or both of the families do not provide the documentation, they may be denied assistance for failure to supply information requested by HPD..

#### **4.2.4 Opening and Closing the Waiting List**

Applications for Housing Choice Voucher assistance will be accepted onto the waiting list unless HPD has determined that it has a sufficient number of applicants on the waiting list to utilize the amount of available funding.

HPD will close the waiting list if staff makes a determination that new applicants would be unable to receive assistance within a reasonable period of time (usually 12 months). All closings of the waiting list will be advertised in English and Spanish language publications throughout HPD's jurisdiction.

Based on a periodic assessment of waiting list size and local need, HPD may elect to open or close the waiting list for applicants who qualify for specific local preferences. In such instances, HPD may elect to accept applications only from applicants who qualify for specific local preference categories.

If examination of voucher utilization, availability of existing funds, and anticipated future funding warrants re-opening of a closed waiting list, HPD will advertise the re-opening for any specific time period that is required to utilize the existing and anticipated future supply of vouchers.

#### **4.2.5 Removal of Applicants from the Waiting List**

Applicants who are deemed ineligible for program participation will be removed from the waiting list, including those who may have initially qualified for a local preference but subsequently changed their circumstances and no longer meet any of HPD's preference categories.

Consistent with the requirements of 24 CFR 982.554, HPD will give an applicant written notice of any decision denying assistance as soon as the final determination of eligibility is completed. The notice will include the reason for the denial of eligibility, and allow the family to request an informal review of the decision. Any such request must be in writing and received by HPD within 30 calendar days from the date of the notice.

In addition, applicants who do not respond to periodic written requests from HPD for updated household information will be removed from the waiting list. Households will also be removed from the waiting list if letters from HPD are returned as undeliverable.

#### **4.3 Selection of Applicants from the Waiting List**

- 1) Local preferences will be used to select families from the waiting list. When funding is available, families will be selected from the waiting list in their determined sequence based on date and time of application within individual local preference categories, regardless of family size, and subject to income targeting requirements. When there is insufficient funding available for the family at the top of the list based on local preference status, HPD will not admit any other applicant from that same local preference group until funding is available for the first applicant.

HPD will use the following system to apply local preferences:

- 2) On a periodic basis, not less than annually, HPD will project the number of applicants to be selected from each preference category. This projection will be based on HPD's assessment of the amount of Housing Choice Voucher resources available to meet local needs and priorities including internal development program priorities.

- 3) Applicants will be drawn in rank order, according to the date and time of application, within each preference category consistent with the periodic projections.

It is HPD's objective to ensure that families are placed in the proper order on the waiting list and selected from the waiting list for admission in accordance with the policies in this administrative plan. The method for selecting applicants described in this plan will leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in this plan.

HPD will strive to include documentation indicating the preference category and the referral agency in the case file for each client selected from the waiting list. This documentation shall be considered sufficient justification for waiting list placement and voucher selection.

## 5 ELIGIBILITY

Upon receipt of an application, HPD determines eligibility for the program by verifying factors required by federal law and regulation. The HUD eligibility criteria are summarized as follows:

- An applicant must meet the definition of “family;”
- An applicant must be within the appropriate income limits;
- At least one member of the applicant family must meet the documentation requirements of citizenship or eligible immigration status;
- An applicant must furnish social security numbers for all family members who claim citizenship or eligible immigration status; and
- Members of the applicant household must not currently or in the past have engaged in activities prohibited by HUD pursuant to 24 CFR 982.553, which describes the requirements for mandatory denial of assistance (See Chapter 15: Denials and Terminations).

### Family

To be eligible for HCV assistance, an applicant must qualify as a “family” pursuant to the table definitions below. Each family must identify all of the individuals who are included in the family at the time of application. Changes in family composition must be updated at the time of annual recertification or within 60 days of the change, whichever is sooner.

Under the HCV program, a “household” may include additional non-family members such as live-in aides, foster children and foster adults, provided that HPD has approved these additional non-family members.

#### 5.1.1 Definitions of Family and Household Members

Family	A single person or a group of two or more persons with or without children who maintain an interdependent relationship (see definition of interdependence following this table) and whose income and resources are available to meet the family’s needs. Families must declare or document as necessary a stable family relationship or have a history as a family unit. Family includes the above regardless of actual or perceived sexual orientation, gender identity, or marital status. A family may also include a live-in aide as part of the household under the provisions described below.
Family Members	A husband, wife, son, daughter, unborn child (pregnancy must be documented), stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law or any other family member or person for whom the head of household can prove legal guardianship or a relationship based on dependency, blood, marriage or domestic partnership. This includes spouses in same-sex marriages performed in and recognized by the State of New York or performed in and recognized by any other city, state, or country that issues marriage licenses to same-sex couples.
Head of Household	The Head of Household is the adult member of the household who is designated by the family as head, is wholly or partly responsible for paying the rent, and has the legal capacity to enter into a lease under State and local law.

	Emancipated minors who qualify under State law will be recognized as head of household.
Spouse of Head of Household	Spouse means the husband or wife of the Head of Household. The definition includes the partner in a marriage or domestic partnership recognized within or outside of this jurisdiction. The term “spouse” does not apply to boyfriends, girlfriends, significant others, or co-heads.
Co-Head	A co-head is an individual in the household who is equally responsible for the lease with the head of household. A family may have a spouse or a co-head, but not both. A co-head never qualifies as a dependent.
Domestic Partner of Head of Household	Domestic partner means the same or opposite sex partner of the head of household. To document a domestic partnership, couples must provide an original Certificate of Domestic Partnership issued by the New York City Office of the City Clerk. Domestic partnerships, civil unions, same-sex domestic partnerships, and same-sex marriages legally entered into in other cities, states or countries will be honored if original valid legal documentation is presented at time of application.
Elderly Family	A family whose head, co-head, spouse, or sole member is at least 62 years of age. It may include two or more persons, each of whom are at least 62, living together; or one or more persons who are at least 62 living with one or more live-in aides.
Disabled Family	A family whose head, co-head, spouse or sole member is a person with disabilities; two or more persons with disabilities; or one or more persons with disabilities with one or more live-in aides (see definition of disability below).
Displaced Family	A family in which each member or the sole member is a person displaced by governmental action, or whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized by federal disaster relief laws.
Remaining Member	<p>A family member of an assisted tenant family who remains in the unit when other members of the family have left the unit. To be considered the remaining family member of the family, the person must have been a member of the family in a current or prior certification of the family composition during the family’s participation in the program, and previously approved by HPD to live in the unit. While a live-in aide can be part of the household, the aide is not considered a member of the family and will not be considered a remaining member. The member of the family must have resided in the assisted unit for at least 180 days to be considered the remaining member.</p> <p>In order for a minor child to continue to receive assistance as a remaining family member, the child must have been awarded emancipated minor status by a court of law.</p> <p>Remaining family member status may be given to a person who gains legal custody of a minor remaining who has not been awarded an emancipated status as long as the legal custodian meets all eligibility requirements.</p>

### **5.1.2 Verifying Interdependence**

Although no single factor will be determinative, evidence that HPD will consider in determining whether such emotional and financial commitment and interdependence exists may include, without limitation, the factors listed below:

- Longevity of the relationship
- Sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;
- Intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits;
- Engaging in family type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;
- Formalizing of legal obligations, intentions and responsibilities to each other;
- Regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;
- Engaging in other patterns of behavior or other action, which evidences the intention of creating a long-term, emotionally committed relationship; and
- Filing for a domestic partner registration certificate under New York City law.

### **5.1.3 Disability**

In accordance with 42 U.S.C. Section 423, a disabled person is defined as a person with a physical, mental or emotional impairment that: is expected to be of long-term and indefinite duration; substantially impedes his or her ability to live independently; is of such a nature that the ability to live independently could be improved by more suitable housing conditions; and limits major life activities.

Disability claims must be verified by a knowledgeable professional source that the person meets these criteria (see Chapter 6: Verification).

### **5.1.4 Family Break-Up**

Participant families who separate while being assisted under the Housing Choice Voucher Program will be assessed on a case-by-case basis to determine which family members remain assisted under the program. The HPD policy will be that:

- The head, co-head or remaining family member of the household who has full legal custody of any minor children will retain the use of the tenant-based voucher.
- In cases where the head and co-head of household have a joint custody arrangement for minor children, the head of household in which the minor children reside more than 50% of the time (defined as 183 days in a year with

365 days and 184 days in a year with 366 days) will retain use of the voucher unless mutually-agreed upon in writing otherwise by the parents or decreed by a court of law.

- If a separation is the result of a divorce or separation under a settlement or judicial decree, HPD will follow any court determination of which family members keep the voucher assistance.
- In cases where the head of household dies, leaving minor children, an adult that has custody of the children is eligible to become the new head of household and will be subject to all HPD eligibility and admission requirements.
- In cases where there are two adult co-heads of household with no minor children, the original head of household will retain the use of the tenant-based voucher.
- In cases where a non-related adult has been added to the household, the original head of household will retain use of the tenant-based voucher.
- In the event that the head of household moves out of the assisted unit or dies, a remaining adult household member (without children) may retain use of the tenant-based voucher if that adult has been part of the household for at least six months, is in compliance with all program rules and regulations and meets all other program eligibility and continued occupancy requirements.
- In the event of death of a sole household member, the tenant-based voucher cannot be transferred.
- Exceptions to the “remaining family member” requirement will be reviewed by the authorized staff member on a case-by-case basis.
- In order for a minor to continue to receive assistance as a remaining family member, the court has to have awarded emancipated minor status to the minor or HPD has to verify that Social Services and or the Juvenile Court has arranged for another adult to be brought into the assisted unit to care for the child (ren) for an indefinite period of time.
- If exceptional circumstances exist concerning the remaining member of a tenant family, a discretionary administrative determination may be made by the authorized staff member on a case-by-case basis.

In addition to the above, HPD will consider the role of domestic violence in the family breakup and follow Violence Against Women Act (VAWA) policy when determining who will retain the subsidy.

#### **5.1.5 Joint/Partial Custody of a Child or Children at Application**

Children who are 17 years old or under who are subject to a joint custody agreement but live in the unit more than 50% of the time (defined as 183 cumulative days of the year) will be considered family members. Applicants will be required to provide legal custody agreements at the time of application to prove the residency status of the child(ren). If a

legal agreement does not exist, the applicant will be required to prove custody through other forms of documentation such as:

- Notarized statements from both parents; or
- Notarized statement from at least one parent and letters from social service providers or a government agency that state that child(ren) reside(s) with the head of household more than 50% of the time;

When both parents are on the waiting list separately and both try to claim the child as a dependent, the parent whose tax return statement claims the child as a dependent will be able to list the child as a dependent on his/her voucher.

#### **5.1.6 Joint/Partial Custody of a Child or Children After Admission**

After admission to the program, additions to family composition for children 17 years old or younger must have legal custody agreements to prove residency status to add the children to the household. Children will be considered members of the household only if there is a joint or partial custody agreement that indicates residence in the assisted unit more than 50% of the time (defined as 183 cumulative days of the year).

Affected participants are required to notify HPD at the time of family composition change and must provide legal custody agreements at the time legal documents are finalized.

In cases of divorce or separation when both parents are seeking to maintain the Housing Choice Voucher and both try to claim the child as a dependent, the designated head of household will maintain voucher until legal custody documents establish residence. If a legal agreement does not exist, residence of minor children may be established through other forms of documentation such as:

- Notarized statements from both parents; or
- Notarized statement from at least one parent and letters from social service providers or a government agency that state that child(ren) reside(s) with the head of household more than 50% of the time;

HPD reserves the right to require documentation of legal custody.

#### **5.1.7 Live-in Aides and Attendants**

A family may include a live-in aide provided that the aide is determined by HPD to be essential to the care and well-being of an elderly person, a near-elderly person, or a person with disabilities; not be obligated for the support of the person(s); and would not be living in the unit except to provide care for the person(s). The definition of live-in aide applies to a specific person. Written verification of such (including the hours the care needs to be provided) is required from a reliable, knowledgeable professional such as a doctor, social worker, or caseworker. Relatives are not automatically excluded from being live-in aides, but they must meet all of the elements in the live-in aide description described above.

A live-in aide is treated differently than family members insofar as:

- Income of the live-in aide is not counted in determining eligibility or level of benefits;
- Live-in aides are not subject to non-citizen rule requirements; and
- Live-in aides may not be considered as a remaining member of the family.

HPD will approve a live-in aide as a reasonable accommodation to make the program accessible to and usable by family members with disabilities. Approval of a live-in aide for reasonable accommodation will be in accordance with 24 CFR Part 8.

### **5.1.8 Guests**

A guest is defined as a person temporarily staying in a unit with the consent of a member of the HCV household. A guest may not reside in the unit for longer than 90 days cumulatively during a year without being considered a part of the household. To add a guest as a member of the household, the head of household must submit a written request to add a household member to HPD and receive approval from HPD.

Any guest who stays beyond 90 days and for whom HPD has not received a request to add a household member will be considered an unauthorized household member. HPD may ask the household to provide verification that the guest is not residing permanently in the subsidized unit.

### **5.1.9 Family Absence from the Unit**

Absence from the unit is defined as the entire family not residing in the unit. One or more absent family members is not considered an "Absence from the Unit."

An entire family may not be absent from the assisted unit for a period of more than 180 total days per year. After 90 consecutive days of absence, assistance may be terminated unless the family presents proof of intent to return to the dwelling within 180 days of departure, and documents that no alternate residence is being maintained. Consideration will be given to individual circumstances concerning hospitalization, incapacitation, family matters and other related situations that may cause an absence from the dwelling. Absences of 90 days or more accompanied by a failure to pay rent or utilities for the whole duration of the absence may result in termination.

Any family member will be considered permanently absent from the unit if they are away for more than 90 consecutive days except where noted below, and they are required to notify HPD of their absence. After HPD is informed of and verifies a family member's permanent absence, which they may do by performing an occupancy inspection, that family member's income will not be counted in the household's income determination. Any member that leaves the household due to medical conditions will be permitted to be absent from the unit for a period of up to 180 consecutive days. Family members must be able to provide proper documentation from a verifiable source that the member is likely to return to the unit within this timeframe.

After termination of subsidy as a result of family absence from the unit, under the following circumstances, subsidy may be re-instated to the family prospectively:

- Upon return to the assisted unit and execution of a HAP contract after documented continuous long-term stay in a nursing home or medical facility as a result of a disability for no longer than 3 years.

HPD reserves the right to approve prospective re-instatement of subsidy for households with a continuous long-term stay in a nursing home or medical facility as a result of a disability but where the family is not able to return to the previously assisted address.

Reinstatement of subsidy under either circumstance would only be considered if the household member is already released or has a scheduled release date from the medical facility or nursing home. Additionally, households must complete an annual recertification package to update income and family composition.

A child who is temporarily (less than 90 consecutive days) away from home due to placement in foster care or another non-permanent situation may be considered a member of the family. HPD will make best efforts to coordinate with ACS, NYCHA, and DHCR to maintain proper tracking of subsidies for foster children. If a family member is over the age of 18 and is a full-time student attending school away from home, the student will continue to be considered a family member unless the family declares that the student's absence is not temporary. Family members serving in the armed forces, children in joint custody, and foster children may be granted exceptions to the definition of temporary absence.

#### **5.1.10 Continual Assistance**

An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the Housing Choice Voucher program. HPD will consider a family to be continually assisted if an interruption in assistance under any 1937 Housing Act program occurs for a maximum period of 60 days.

#### **5.1.11 Reinstatement after Relinquishing Voucher**

A household that voluntarily relinquishes their voucher may request that the voucher be reinstated within six months of the date of the relinquishment. HPD will review requests on a case by case basis and reserves the right to refuse reinstatement if households who were in violation of their lease or in the process of having their subsidy terminated at the time of relinquishment. Requests for reinstatement after six months will not be considered.

### **5.2 Income**

#### **5.2.1 Income Limits at Admission**

Household income at the time of initial eligibility determination and admission shall not exceed 50% of the Area Median Income except in the case of enhanced vouchers, tenants in certain government-assisted projects, and other special circumstances, as described below. Annual income will be determined in accordance with 24 CFR Part 5

and includes all amounts, monetary or not, that go to or are on behalf of, the family head or spouse (even if temporarily absent) or to any other family member, or all amounts anticipated to be received from a source outside the family, and assisting the family, during the 12-month period following admission or annual reexamination date. Families must provide verification of income any time prior to annual recertification as requested by HPD.

Exceptions to income limits include:

- **Enhanced Vouchers:** HPD may issue enhanced vouchers to eligible moderate-income households residing in a preservation eligible project. Families affected by a mortgage prepayment or voluntary termination of mortgage insurance action may have a family income that is equal to, or less than, 95% of the area median income as determined by HUD. This 95% income limit applies to moderate-income families residing in a low vacancy area (three percent or less vacancy rate). Households residing in Mod-Rehab conversions also receive enhanced vouchers, but they are subject to an income limit of 80% of the area median income.
- **Rental Assistance Demonstration (RAD):** HPD may provide assistance to eligible households with income up to 80% AMI at initial tenancy under RAD. Income eligibility is limited to 50% AMI for leasing turn over units in RAD Project Based Voucher units.
- **Other:** HPD may issue vouchers to households with incomes up to 80% of area median income that reside in Housing Development Fund Cooperative (HDFC) projects or other properties identified by HPD provided that: 1) the household would pay more than 30% of household income for rent as a result of a rent restructuring program or other comparable action; and, b) the household meets all other program eligibility and suitability requirements. The 80% threshold also applies to applicants referred through HPD's Emergency Housing Services Bureau and the "Special Circumstances" preference category.

## 5.2.2 Adjustments to Income

### 5.2.2.1 Medical Expenses

Deductions from income for medical expenses are allowed for all family members in households whose head or spouse is elderly or disabled. Families who claim medical expenses will be required to submit a written certification as to whether or not any expense payments have been, or will be, reimbursed by an outside source. Medical expenses are defined as indicated in the IRS Publication 502. If a family has medical expenses and no disability assistance expenses, the allowable medical expense is that portion of total medical expenses that exceeds three percent of annual income.

### 5.2.2.2 Childcare Expenses

A childcare expense may be deducted from income only when it allows an adult family member to be employed, to actively seek employment, or to further his/her education. Childcare expenses deducted to permit employment must be reasonable and may not exceed the amount of employment income that is included in annual income.

### **5.2.2.3 Disability Assistance Expenses**

Allowable disability assistance expenses include only those costs associated with attendant care or auxiliary apparatus (e.g., wheelchair, medical equipment, etc.) for a disabled member of the family, which allow an adult family member to be employed outside of the home. The amount deducted is equal to the amount by which the cost of the care attendant or auxiliary apparatus exceeds three percent of gross income.

### **5.2.2.4 Income from Full-time Students**

In accordance with HUD, HPD will not include in annual income the earnings in excess of \$480 for each full-time student 18 years and older, excepting the head of household or spouse/partner. However, financial aid amounts exceeding tuition must be included in annual income with the exception of financial aid paid to a student over 23 with dependent children, or to a full-time student residing with his or her parents.

### **5.2.2.5 Reporting Minimal or No Income**

There is no minimum income requirement. However, staff must use good interviewing and investigative skills, including the HUD Enterprise Income Verification system when available, to determine whether an applicant actually has income but is not fully reporting it. For any family reporting minimal or no income (defined as less than \$2,000 gross income annually), the Head of Household will be required to complete a Statement of Income and Expenses documenting the family's regular living expenses (such as food and shelter) and the source of revenue for each expense. In addition, HPD requires families claiming minimal or no income to produce an IRS Tax Return Transcript or IRS Verification of Non-filing Letter. HPD also reserves the right to require submission of the Statement of Income and Expenses by the Head of Household if the family's income is deemed unreasonably low to cover basic needs based on family size. Failure to provide such information will be grounds for denial or termination of assistance. HPD reserves the right to require non-elderly, non-disabled participants who claim zero income, or an amount deemed unreasonably low to cover basic needs based on family size, to recertify at HPD's discretion.

### **5.2.2.6 Income of Temporarily Absent Family Members**

Income of family members who are temporarily absent is counted except for full-time students who have documented their absence from the family. This includes the income (pay and allowances) of family members serving in the military except for hazardous duty pay when exposed to hostile fire.

### 5.2.2.7 Averaging Income

There are two ways to calculate income that is not received for a full year:

- Calculating projected annual income by annualizing current income (and subsequently conducting an interim reexamination if income changes); or
- Using information available to average anticipated income from all known sources when the sources are expected to change during the year.

HPD will generally use the method of annualizing income to determine income that is not received for a full year.

### 5.2.2.8 Rounding of Income and Deductions

Generally HPD will round to the nearest whole dollar at the final calculation for each income/deduction source.

HPD will round as follows for the following income and deductions:

- **Social Security Income:** When income is verified through EIV, HPD will use the amount listed in EIV. HPD will use the income even though the full monthly benefit is rounded down before any deductions and then annualizing that monthly benefit. This methodology will be applied to all SS benefits whether or not there are any deductions applied. For example if the full monthly benefit is \$547.90 and the monthly medical insurance premium is \$66.60, annual income is:  $\$547.00 \times 12 = \$6,564$ . In instances where the family disputes EIV reported SS or SSI benefits or when EIV is data is not available, HPD will use the full amount listed on the SSA Proof of Income Letter and round the final result of the calculation once annualized.
- **Other Income/Deduction Sources which include direction on rounding:** Where the income/deduction verification document has direction on rounding of income/deductions, HPD will follow the direction on the verification document to calculate annual income and/or deductions.
- **Income/Deduction Sources with NO direction on rounding:** If the income/benefit/deduction verification document does not include any direction concerning rounding, HPD will calculate income/benefit/deductions by annualizing the entire weekly, bi-weekly or monthly income/benefit/deduction. Once the annual amount is calculated, HPD will round to the nearest whole dollar. For example, if the weekly income is \$300.10, annual income is  $\$300.10 \times 52 = \$15,605.20$  which is rounded to \$15,605.

### 5.2.2.9 Assets Disposed of for Less than Fair Market Value

At initial eligibility and annual recertification, HPD will determine whether an applicant or participant family has disposed of an asset for less than fair market value within the past two years. In such an instance, HPD may assign the fair market value to the asset. As

permitted by regulation, HPD may adopt a minimum threshold to ignore small amounts that would not be counted toward income.

#### **5.2.2.10 Earned Income Disallowance**

Pursuant to 24 CFR 5.617, HPD will disallow the increase in annual income provided by the regulations covering the self-sufficiency incentive for disabled families. The disallowance of increases in income as a result of employment of persons with disabilities will not apply for purposes of admission to the program.

### **5.3 Income Targeting**

At a minimum, 75% of families admitted to the HCV program in New York City during any fiscal year will be families whose annual income do not exceed the higher of 30% of the area median income as defined by HUD or the Federal poverty level. HUD will treat multiple PHAs serving one jurisdiction as a single PHA for income targeting purposes. HPD will cooperate with NYCHA to assure that aggregate admissions comply with the 75% requirement for the jurisdiction. Families admitted to the HCV program as a result of a housing conversion action are not subject to the income targeting requirements and their admission is not counted in determining whether HPD is complying with the income-targeting requirement.

With HUD approval, and in accordance with 24 CFR Part 982, HPD may elect to admit a greater percentage of families with incomes above 30% of the area median income.

### **5.4 Citizenship/Eligible Immigration Status**

In order to receive assistance, at least one family member must be a U.S. citizen or eligible immigrant. Eligible immigrants are persons who are in one of the immigrant categories as specified by HUD in 24 CFR Part 5. For the citizenship/eligible immigration requirement, the status of each member of the family is considered individually before the family's status is defined. Families that include eligible and ineligible individuals are called "mixed." Such applicant families will be given notice that their assistance will be pro-rated and that they may request an informal review if they contest this determination.

Individuals who are neither citizens nor eligible immigrants may elect to contest HPD's determination of their status. For citizenship and eligible immigration status eligibility requirements only, the applicant is entitled to an informal hearing, instead of an informal review.

### **5.5 Mandatory Social Security Numbers**

Families are required to provide verification of Social Security numbers (SSN) for all family members claiming citizenship or eligible immigration status prior to admission. This requirement also applies to persons joining the family after admission to the

program. Failure to furnish verification of Social Security numbers is grounds for denial or termination of assistance.

Children under six years old who have not been issued an SSN and applicants of the Moderate Rehabilitation Single Room Occupancy (SRO) program will be granted 90 days to furnish an SSN.

Applicants without Social Security cards may provide other acceptable government forms of documentation that identify the Social Security number including unemployment benefit letters and Social Security award letters.

## **5.6 Privacy Rights**

Applicants and participants, including all adults in their households, are required to sign form HUD 9886 and/or HPD's Authorization for the Release of Information. These documents incorporate the Federal Privacy Act Statement and describe the conditions under which HUD/HPD will release family information. HPD's policy regarding the release of information is in accordance with state and local laws, which may restrict the release of family information.

HPD's practices and procedures are designed to safeguard the privacy of applicants and program participants. All applicant and participant files will be stored in a secure location, which is only accessible by authorized staff. All files must be signed for when removed from the file storage area and returned promptly after use. Access to information stored electronically will be limited to HPD employees with proper authorization.

HPD staff will not discuss family information contained in files unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

## **6 VERIFICATION**

### **6.1 Third Party Verification**

Before an applicant is issued a voucher, and at subsequent recertifications, HPD must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain the family's consent to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. HPD will not pass on the cost of verification to the family.

Third party verification is considered to be the most effective means of verifying information provided by the family. HPD will include verification forms in the recertification package with a request for return by the appropriate third party within 14 calendar days. Third party verification forms may not be returned to HPD via hand-delivery by the family, except in the case of computer printouts from other government agencies, as noted below. HPD will use any source available for verifying income, including inquiries with the Internal Revenue Service (IRS). Each client file contains a record of the documentation that has been provided. Verification of eligibility items may not be more than 60 days old from time of receipt by HPD to the voucher issuance date.

Any documents used for verification must be the original (HPD will keep photocopies and return the originals). The documents must not be damaged, altered or in any way illegible.

In the event that third party written verification cannot be obtained, staff will document the file accordingly and obtain oral verification via a telephone call or in-person meeting. When third party oral verification is used, staff will complete a form to be included in the case file noting the source's name, date and time of the conversation and the information provided. In the event that third party oral verification cannot be obtained, HPD will either review submitted documents or accept a certification/self-declaration (notarized statement) from the applicant of the reported information. If third party verification is received after documents have been accepted as provisional verification, and there is a discrepancy, HPD will use the third party verification.

HPD will also accept as third party verification computer printouts, computer matching or digital images provided from other government agencies. Such sources include but are not limited to: the Social Security Administration, Veterans Administration, the U.S. Department of Housing and Urban Development, NYC Human Resource Administration, and the NYC Administration for Children's Services. HPD will accept computer printouts from these agencies.

HPD may also accept as third party verification computer printouts, computer matching or digital images provided from trustworthy non-governmental sources, such as companies that provide employment verification services under contract for a participant's employer.

Pursuant to HUD's

Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs published March 8, 2016, elderly and disabled households where 100% of household income is

fixed income may declare their income and will not need third party verification of their fixed income. Instead, HPD will recalculate family income by applying the published Cost Of Living Adjustment (COLA as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers prepared by the Bureau of Labor Statistics) to the previous year's household income.

Fixed income is defined as:

- Social Security payments to include Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI);
- Federal, State, local, and private pension plans; and
- Other periodic payments received from annuities, insurance policies, retirement funds, disability or death benefits, and other similar types of periodic receipts that are of substantially the same amounts from year to year.

Additionally, all families are required to report all assets annually. HPD may accept families' declaration of the value of individual assets with a value of less than \$5,000 for existing participants. HPD's reexamination documentation can serve as the declaration of the value of the assets and its resulting income. In these instances, HPD does not need to request supporting documentation (e.g., bank statements) from the family to confirm the assets or the amount of income expected to be received from those assets. This verification of asset methodology applies only to existing participants.

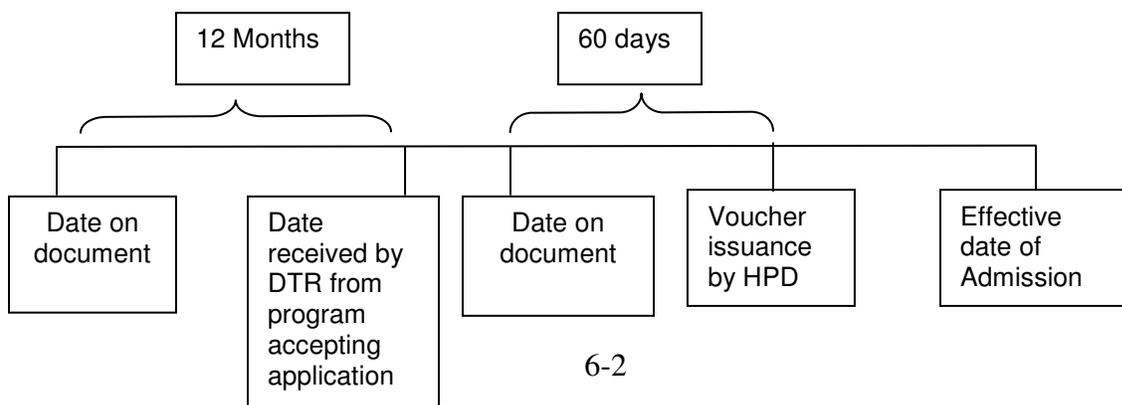
Finally, households with income that is fully excluded (food stamps, income from live in aides) may provide a declaration of that income as sufficient documentation. The declaration of the income in the application and reexamination documents will be acceptable. Income that is partially excluded (such as employment income for full time students) will continue to be subject to HUD prescribed verification requirements as described in Section 6 unless requirement is waived by HUD at HPD request.

HPD reserves the right to request additional documentation as necessary.

## 6.2 Age of Verification Documents

### 6.2.1 Age of Documents When They Are Received by HPD at Application

HPD's practice is to require that verification documents be dated within 12 months from the date they are submitted to HPD's Division of Tenant Resources (DTR) by the HPD program receiving the application. Older documents may be used when and if they represent the most recent scheduled report, e.g., annual or semi-annual pension reports or other such items that are not provided more than once every two months.

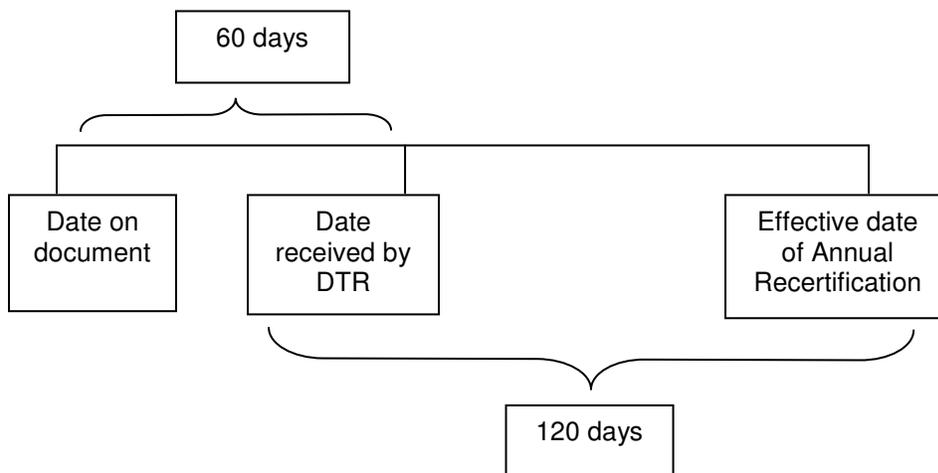


### 6.2.2 Admission - Regulatory Requirement

The timing of verification is critical at admission. Income, asset, medical and expense verification documents must be dated within 60 days of the date a voucher is issued. Therefore, if more than 60 days has elapsed between the date of verification and the issuance of a voucher for initial admission, the item must be re-verified. Older documents may be used when and if they represent the most recent scheduled report, e.g., annual or semi-annual pension reports.

### 6.2.3 Recertification

Verification documents are usable for calculation purposes for 120 days from the time they are received in the office until the effective date of the recertification. They must be dated within 60 days of the date they are provided to HPD. HPD will accept documents dated up to six months before the effective date of the family's reexamination if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity only provides semi-annual reports, HPD would accept the most recent report.



### 6.3 Verification Factors and Required Documentation

HPD verifies household composition, family income and assets, citizenship/eligible immigration status, factors allowing a local preference, and other items relating to program eligibility before an applicant is issued a voucher. The table below lists the factors to be verified along with acceptable forms of documentation within each category.

For applicants, verification of U.S. citizenship/eligible immigration status occurs at the same time as verification of other factors of eligibility. Upon request, HPD will grant an extension of 60 days for families to submit evidence of eligible immigrant status prior to removing the family from the waiting list.

<b>Household Composition – Legal Identity (required for each listed household member)</b>	
<b>Verification Factors</b>	<b>Form of Documentation</b>
Name	A form of <u>government issued</u> identification such as a birth certificate, driver’s license. Or, an employment identification card.
Age	Government issued documentation such as a birth certificate or driver’s license that includes a birth date.
Married	Certificate of marriage or license.
Divorced	Copy of the certified divorce decree.
Separated	Copy of a certified, court-ordered maintenance award (if legal) or a notarized statement declaring separation.
Interdependent Relationship (if not married or registered as domestic partners with the City Clerk)	Joint bank accounts, purchases or loans; prior or current lease showing co-habitation; credit report showing residence and joint financial activity.
Dependent Child or Guardianship	Birth certificate that demonstrates relationship to adult in household. Guardianship requires documentation of court-ordered guardianship and/or verification from a social service or government agency.
Disability	Documentation includes but is not limited to: letters regarding qualification for or receipt of SSI payments or disability benefits from the responsible agency; proof of residence in an institution; documents showing hospitalization for a disability; or a letter from another knowledgeable professional such as a health or service professional or a social worker
Full-Time Dependent Student	Current school records documenting a student’s status as full-time at a degree or certificate granting institution. This requirement applies only to household members 18 years and older.
<b>Income</b>	
<b>Verification Item</b>	<b>Form of Documentation</b>
Employment Income	<p>HPD will check the Enterprise Income Verification database (EIV) to verify sources of income and benefits.</p> <p>Most recent paycheck stubs (consecutive: six for weekly pay, three for bi-weekly or semi-monthly pay, two for monthly pay); employer-generated salary report or letter stating current annual income, W-2 forms if the applicant has had the same employer for at least two years and increases can be accurately projected; earnings statements; and most recent federal income tax statements are required.</p> <p>Verification forms for employment income must specify:  Beginning date of employment; amount of pay; frequency of pay; effective date of last pay increase; and probability and effective date of any increase during the next 12 months.</p>

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Self-employment, Gratuities	Form 1099, 1040/1040A or Schedule C of 1040 showing amount earned and employment period; signed self-certifications or income tax returns may be used.
Business Income	IRS Form 1040 with schedules C, E or F; financial statements; any loan application or credit report listing income derived from business during the preceding 12 months.
Rental Income	Copies of recent bills, checks or leases to verify income; tax assessment information; insurance premiums; receipts for maintenance and utility expenses; bank statements.
Dividend and Interest Income	<p>Copies of current bank statements, bank passbooks, certificates of deposit showing current rate of interest; copies of IRS form 1099 from the financial institution and verification of projected income for the next 12 months; broker's quarterly statements showing value of stocks, bonds and earnings credited to the applicant; tax forms to indicate earned income tax credits.</p> <p>Households must declare and provide verification of assets and the resulting income in HPD's application packages. Existing participants with assets valued at less than \$5,000 may declare the value of their assets. HPD reserves the right to request verification. Applicants must provide verification documents for all assets declared on their application.</p>
Interest from Sale of Real Property	Amortization schedule with amount of interest earned in next 12 months
Unemployment Compensation	Benefit letter signed by authorizing agency; copies of checks or records from agency stating payments, dates, and pay period and benefit schedule.
Social Security and Supplemental Security Income (SSI)	<p>Printout from Enterprise Income Verification System (EIV), or the annual award letter signed by authorizing agency.</p> <p>For tenants receiving SSI or SS that are being recertified early in the year before receiving their benefit letters, HPD will apply the published Cost Of Living Adjustment to the prior year's benefit when determining anticipated income from these sources.</p> <p>For elderly or disabled households where 100% of household income is fixed income such as SS or SSI, HPD will apply any published cost of living adjustments to the previously verified income amount. No additional verification will be required from the household.</p>
Public Assistance Benefits	Original benefit letter signed by authorizing agency; copies of checks or records from agency stating payments, dates, pay period and benefit schedule; copies of validated bank deposit slips with identification by bank; copy of Welfare Management System (WMS) report; if applicable, maximum shelter allowance schedule with ratable reduction schedule provided by applicant.
Recurring Contributions or Gifts	Copies of checks received by the applicant or a self-certification that contains the following information: the person who provides the gifts; the value of the gifts; the regularity (dates) of the gifts; and the purpose of the gifts.
Family Assets	Passbooks, checking or savings account statements, certificates of deposit, stock or bond documents or other financial statements; documents related to retirement funds; opinions from attorneys, stockbrokers, bankers and real estate agents verifying penalties and reasonable costs incurred to convert

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	<p>assets to cash.</p> <p>Existing participants with a total asset of \$5,000 or less may provide a self-certification indicating asset value and income at annual recertification. HPD reserves the right to request additional documentation.</p> <p>All documents verifying value of asset and expenses associated with converting the asset to cash must be submitted to HPD.</p>
Real Property	<p>Copies of real estate tax statements; copies of real estate closing documents, which indicate distribution of sales proceeds and settlement costs; mortgage statements, a copy of a deed, utility bills for rental property and any other documents to establish the current value of any property</p> <p>.</p> <p>In a situation where an asset is owned by more than one person, only the percentage owned by the participant will be counted as the asset.</p>
Trust	<p>In the event that a participant is owner of a trust but does not receive income from that trust, proper documentation such as a "trust instrument" that explains that the participant does not, or cannot, receive income from the trust, must be submitted.</p>
Disability Income/Workers Compensation	<p>Benefit letter from authorizing agency indicating pay rate and period over which payments will be made; copies of checks or records from agency stating payments, dates, pay period and duration of benefit term; copies of validated bank deposit slips with identification by the bank.</p>

Pension	<p>Benefit letter from authorizing agency; copies of checks or records from agency stating payments, dates, pay period and duration of benefit term; copies of validated bank deposit slips with identification by the bank; most recent quarterly pension account statement.</p> <p>For elderly or disabled households where 100% of household income is fixed income such as a pension, HPD will apply any published cost of living adjustments to the previously verified income amount. No additional verification will be required from the household.</p>
Alimony and/or Child Support	<p>Copies of recent checks, recording the date, amount and check number of alimony or child support payment; a court ordered support schedule; recent letters from the court.</p> <p>If payments are irregular, the family must provide:</p> <ul style="list-style-type: none"> <li>• A copy of the separation or settlement agreement or divorce decree stating the amount and type of support and payment schedules;</li> <li>• A statement from the agency responsible for enforcing payments to show that the family has filed for enforcement;</li> <li>• A notarized affidavit from the award recipient indicating the amount received;</li> </ul> <p>A public assistance notice of action showing amounts received by the human resource/social service agency for child support.</p>
Education Scholarships	Award letters showing the scholarship's purpose, amount and dates of the awards.
<b>Allowable Deductions from Income</b>	
<b>Type of Deduction</b>	<b>Form of Documentation</b>
Medical Expenses	Acceptable forms of documentation of medical expenses include but are not limited to: copies of cancelled checks that verify payments on outstanding medical bills that will continue for the next 12 months; income tax forms which itemize medical expenses that are expected to continue over the next 12 months; copies of cancelled checks that verify payments to a live-in aide; receipts or ticket stubs which verify transportation expenses directly related to medical care; written verification by a doctor, hospital or clinic personnel of the anticipated medical costs to be incurred by the family and regular payments due on medical bills; written confirmation by the insurance company or employer of health insurance premiums to be paid by the family.
Childcare Expenses	Verification of childcare expenses must include the childcare provider's name, address and telephone number, the names of the children cared for, the number of hours the childcare occurs, the rate of pay, and the typical yearly amount paid, including school and vacation periods. HPD will require as documentation copies of receipts or cancelled checks indicating childcare payments. If the childcare provider is an individual, that person must provide a notarized statement of the amount they are charging the family for their services.

<p>Assistance to Persons with Disabilities</p>	<p>Written certification from a reliable professional that the disabled person requires the services of an attendant and/or the use of any auxiliary apparatus permitting him/her to be employed or function with sufficient independence thus enabling another family member to be employed; family's certification as to how much if any amount of reimbursement for any of the expenses of disability assistance they receive; and the following documentation:  <u>Attendant Care:</u></p> <ul style="list-style-type: none"> <li>• Attendant's written certification of amount received from the family, frequency of receipt, and hours of care provided; and</li> <li>• Certification of family and attendant and/or copies of cancelled checks family used to make payments.</li> </ul> <p><u>Auxiliary Apparatus:</u></p> <ul style="list-style-type: none"> <li>• Receipts for purchase or proof of monthly payments and maintenance expenses for auxiliary apparatus; and</li> <li>• In the case where the person with disabilities is employed, a statement from the employer that the auxiliary apparatus is necessary for employment.</li> </ul>
<p><b>Citizenship or Eligible Immigration Status</b></p>	
<p><b>Status</b></p>	<p><b>Form of Documentation</b></p>
<p>Citizens or Nationals of the United States</p>	<p>A U.S. birth certificate; U.S. passport; resident alien/registration card; Valid, un-expired U.S. Passport, Certificate of Citizenship, Certificate of Naturalization, U.S. Citizen Identification Card.</p> <p>US Citizens unable to provide verification of citizenship may self-certify their citizenship using the Declaration of U.S Citizenship form. This form is in addition to a signed declaration under penalty of perjury.</p>
<p>Eligible Immigrants Aged 62 or over</p>	<p>A signed declaration of eligible immigration status and proof of age.</p>
<p>Non-Citizens with Eligible Immigration Status</p>	<p>A signed declaration of status and verification consent form along with one or more of the following original immigration documents:</p> <ul style="list-style-type: none"> <li>• Resident Alien Card (I-551);</li> <li>• Alien Registration Receipt Card (I-151);</li> <li>• Arrival-Departure Record (I-94);</li> <li>• Temporary Resident Card (I-688);</li> <li>• Employment Authorization Card (I-688B);</li> <li>• Receipt issued by the United States Citizen Immigration Services (USCIS) for issuance of replacement of any of the above documents that shows individual's entitlement has been verified.</li> </ul> <p>HPD will copy the documents and return them to the family. HPD will verify the status through the USCIS SAVE system. If this primary verification fails to verify the status, HPD will request within 10 days that the USCIS conduct a manual search.</p>
<p>Non-Citizen Students on Student Visas</p>	<p>Student visa  Note: Non-citizen students on student visas are ineligible family members even though they are in the country lawfully.</p>

## 6.4 Enterprise Income Verification

HPD uses the Enterprise Income Verification (EIV) system to verify income reported by tenants in assisted housing programs. The EIV system compares tenant income data obtained from various sources, including tenant-supplied information recorded on Form HUD-50058, wage information from the National Directory of New Hires, and Social Security and Supplemental Security Income from the Social Security Administration. The HUD Office of Public and Indian Housing (PIH) is responsible for administering and maintaining the EIV system.

At admission and when adding a member to the household, HPD will also use EIV to review reports related to:

- **Existing tenants-** To determine if a tenant is receiving subsidy in another housing program. Federal regulations prohibit individuals from receiving rental assistance if they are receiving another housing subsidy (24 CFR 982.551). See also page 7-2, under “Family Obligations.”
- **Prior debts owed to another PHA-** To determine if a tenant owes money to another PHA and is therefore ineligible for assistance from HPD. If applicants owe HPD or another PHA any debt, they will be denied assistance. Those with repayment agreements will be denied until any debt owed is fully satisfied.
- **Adverse Termination from another PHA-** To determine if a tenant was terminated from another housing program for a reason that would make him/her ineligible to receive assistance from HPD. Adverse termination reasons of Criminal Activity – Drugs, Criminal Activity – Sex Offender and Failure to Report Income are reasons that may lead to denial of subsidy.

At the end of participation of an assisted family, HPD will use EIV to enter the reason for termination of subsidy if it is for any reason other than the tenant voluntarily giving up subsidy or no longer experiencing rent hardship (tenant share equals contract rent).

### 6.4.1 Authorization

Signed Form HUD-9886 or HPD’s Authorization for the Release of Information / Privacy Act Notice (Alternative to Form HUD-9886) authorizes HPD to obtain and verify income information from various sources, including current and former employers, state agencies, and the Social Security Administration. HPD may use income verification information at new admission, interim recertification, annual recertification, or at any other time it deems appropriate. Information obtained through third party verification is protected under the Privacy Act.

### 6.4.2 Security

HPD will designate a security officer to monitor the EIV system. The security officer’s responsibilities include:

- Maintaining a record of users with approved access

- Recording and monitoring security issues
- Enforcing security procedures
- Conducting quarterly reviews of all user IDs
- Revoking or modifying access rights as appropriate
- Reporting evidence of unauthorized access or security breaches.

All HPD employees will be trained in EIV security policies and procedures before receiving access to EIV information. In addition, HPD will conduct annual briefings on security policies and procedures. EIV access will be limited to HPD staff whose duties require access to EIV information. HPD will maintain a record of all approved users. Users who no longer require access will have their access rights revoked. The security officer will conduct periodic reviews to ensure that EIV access is limited to authorized individuals.

HPD will maintain the physical security of EIV data by instructing staff not to print income information, when possible, and instead print the introductory screen of the tenant's EIV record to document that the record has been reviewed. In the event that income information needs to be printed, any printed information will be kept in the file for use during the conference or informal review.

#### **6.4.3 EIV Income Discrepancies**

If EIV data shows a significant difference from tenant-reported income, or a source of income not reported by the tenant, HPD will request written third party verification from the source of income. In addition, HPD may require the tenant to provide tax returns or historical income documentation that shows patterns of employment, paid benefits, etc. HPD defines a significant difference in income as \$2,400. HPD will use HUD guidance and use more correct verified income in tenant share determination up until \$5,000 in difference. For differences greater than \$5,000 more annually between the annual income last reported to HPD and the income earned for the same period as reported by a third party source of information, HPD will review level of HAP overpayment and:

1. Sign a Statement of Understanding with the household,
2. Enter into repayment agreements,
3. Refer the household to the Department of Investigation, and/or
4. Terminate subsidy for the household.

EIV cannot be used to calculate current employment and/or unemployment income. No adverse action can be taken against a tenant as a result of the EIV system until HPD has independently verified the EIV information and the tenant has been granted an opportunity to contest any findings through established procedures.

#### **6.4.4 Underreporting Income and Assets**

Cases of suspected fraud will be referred to the Section 8 Program and Integrity Compliance (PIC) Unit. Serious cases (those involving verified discrepancies exceeding \$5,000) may be referred to the New York City Department of Investigation Inspector General for further investigation. In cases where HPD is able to verify unreported

income (including those generated from unreported assets), HPD will take actions it deems appropriate in accordance with HPDs repayment agreement guidelines, e.g., adjusting future HAP payments, requiring a Repayment Agreement, or termination. These will be determined by DTR staff at the level of Coordinator or above. In such cases, the designated staff reserves the right to take into consideration the following before deciding on an appropriate action:

- Whether or not the unreported income is excludable;
- Whether or not the difference in income impacts the HAP amount, and by how much.

If an employer or asset manager charges a fee for third party verification of income, HPD can deem it “unavailable.” In addition, if income anticipated from a specific source is so insignificant that spending the time to verify the amount is not cost effective, HPD may choose not to seek third party verification.

## **7 SUBSIDY STANDARDS AND VOUCHER ISSUANCE**

### **7.1 Briefings and Family Obligations**

#### **7.1.1 Briefings**

Upon selection of the family from the waiting list, HPD will conduct an oral briefing with the head of household. HPD reserves the right to conduct this briefing in person, by phone or through an online service. Individuals with a disability may have a proxy attend the briefing session on their behalf if proper documentation is provided indicating their inability to attend and naming the proxy. The proxy must provide a Power of Attorney documentation.

The briefing will cover the following general topics:

- How the HCV program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside HPD's jurisdiction; and
- Opportunities for expanded housing choices outside areas of poverty concentration.

An interpreter, or fluent HPD employee, will attend each briefing to assist Spanish-only speaking clients. HPD will take affirmative steps to make interpreters available when briefing client groups with other foreign language requirements (see Chapter 2).

All applicants attending a briefing will receive a packet that includes a number of documents that further explain the HCV program requirements. Briefing packet requirements are stipulated by 24 CFR Part 982.301(b).

HPD also uses the briefing session to determine final eligibility in cases where an applicant is missing a required piece of information. Applicants who miss more than one briefing may have their application rejected and will be required to re-apply for admission. HPD will not issue a voucher to a family unless the household representative has attended the briefing and signed the voucher.

#### **7.1.2 Family Obligations**

The following are obligations of participants under the program. Violation of one or more of these obligations is grounds for denial or termination of assistance.

The family must:

- Supply any information that HPD or HUD determines is necessary in the administration of the program. This includes any requested certification, release or other documentation. All information must be true and complete;
- Supply any information regarding family income and composition requested by HPD for use in any annual or interim recertification;
- Disclose and verify social security numbers and sign and submit consent forms for obtaining information in accordance with regulations;

- Allow HPD to inspect the unit at reasonable times and after reasonable notice;
- Be held responsible for correcting an HQS breach caused by the family;
- Receive written approval to move from HPD and notify the owner/landlord and HPD in writing before the family moves out of the subsidized unit, or terminates the lease on notice to the owner;
- Promptly notify HPD of any planned absences from the unit greater than 90 days;
- Promptly give HPD a copy of any owner eviction notice;
- Use the assisted unit for residence by the family and the unit must be the family's only residence;
- Promptly inform HPD of any changes in family composition, including the birth, adoption or court-awarded custody of a child, or the removal of any family member from the unit. The composition of the family residing in the unit must be approved by HPD; and
- Promptly notify HPD of any change in household income.

The family must *not*:

- Commit any serious or repeated violation of the lease;
- Assign the lease or transfer the unit;
- Own or have any interest in the unit (other than in a cooperative, or the owner of a manufactured home leasing a manufactured home space);
- Receive Housing Choice Voucher tenant-based assistance while receiving another housing subsidy for the same unit or for a different unit, under any duplicative (as determined by HUD) federal, state or local housing assistance program;
- Engage in profit making activities in the unit, unless such activities are legal *and* incidental to primary use of the unit for residence by members of the family;
- Engage in drug-related criminal activity, violent criminal activity, other criminal activity, or alcohol abuse that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

## **7.2 Issuance of Vouchers and Subsidy Standards**

### **7.2.1 Voucher Issuance**

When funding is available, and after the family has been certified eligible and briefed on program requirements, HPD issues a voucher to the family. The voucher represents a contractual agreement between HPD and the family specifying the rights and responsibilities of each party, and is the family's authorization to search for an eligible unit. It also describes the program and procedures for HPD approval of a unit selected by the family, and specifies the size of unit the family is eligible for. A voucher does not constitute admission to the program, and a voucher-holder is not considered a program participant until such time as a lease and HAP contract become effective.

Individuals with a disability may have a proxy or power of attorney sign the voucher paperwork on their behalf if proper documentation is provided indicating their inability to come to HPD to sign the paperwork in person and naming the proxy.

HPD will stay as close as possible to 100% voucher and budget utilization, and will perform a monthly calculation (or more frequent as warranted) to monitor utilization rates. Applications will be processed and vouchers issued accordingly.

HPD may over-issue vouchers only to the extent necessary to meet leasing goals. All vouchers that are over-issued will be honored based on funding availability. If the agency finds it is over-leased, it will adjust future issuance of vouchers so as to not exceed the budget limitations over the fiscal year.

### **7.2.2 Voucher Term, Suspensions and Extensions**

The initial voucher term will be 120 calendar days. HPD may grant extensions to certain voucher holders in documented special circumstances, including cases where doing so will be in furtherance of goals associated with HPD housing development programs. HPD will also grant extensions if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. An HPD employee at the level of Deputy Director or higher (or his/her designee) must approve these extensions.

HPD will suspend the voucher term (i.e., “stop the clock”) if the applicant has provided a Request for Tenancy Approval (RFTA) until the time that HPD approves or denies the request. If the lease for which the RFTA was submitted is not approved or executed (a “delink”), the applicant’s search time will be extended for a period of time equal to the number of days elapsed between the submission of the RFTA and the denial of the request.

If a voucher has expired, the family will be required to reapply and will be placed on the waiting list only if HPD is accepting applications and the family is still eligible. HPD is not required to notify a family that their voucher has expired.

For information on voucher terms when moving, see Chapter 14: Moving with Continued Assistance and Portability.

### **7.2.3 Subsidy Standards**

The subsidy standard is the criteria established for determining the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions. Generally, HPD’s subsidy standards provide for the smallest number of bedrooms needed to house a family without over-crowding. According to HUD’s HQS space requirements, a unit is not overcrowded as long as it has at least one bedroom or living/sleeping room for each two persons. Families may choose an apartment smaller than their voucher size, provided the unit is not overcrowded. However, subsidy standards are based on the smaller of the actual unit size or the size listed on the voucher.

The unit size on the voucher remains the same as long as the family composition and HPD's subsidy standards remain the same, regardless of the actual unit size rented. Families that exceed two people per living/sleeping room in a household are overcrowded and will be required to reduce the household size, or move to an appropriately sized unit.

#### 7.2.4 Determining Family Unit (Voucher) Size

The unit size on the voucher will be determined solely by the number of people in the household. HPD does not determine who shares a bedroom/sleeping room. The table below establishes the occupancy standard for families.

Size of Family	Family Voucher Size
1 or 2	1
3 or 4	2
5 or 6	3
7 or 8	4
9 or 10	5
11 or 12	6

Within these parameters, the following guidelines will apply:

- Any single live-in aide approved by HPD to reside in the unit will be counted as a household member for the purpose of determining the appropriate unit size and will be issued a separate bedroom;
- A child who is temporarily away from home (for less than 90 consecutive days) due to placement in foster care or another non-permanent situation may be considered a member of the family and included in determining voucher size
- Foster children will be included in determining unit size only if they will be in the unit for more than 183 days (six months) a year;
- In the case of documented pregnancy by a member of the household, HPD will consider the unborn child as a household member;
- Children specified in joint custody agreements will be considered family members if the agreement specifies that they live with the parent at least 183 days a year; and
- Space may be provided for a family member who is away at school but who lives with the family during school recesses.

Changes to subsidy standard due to change in family composition or as a result of policy changes will be effective at the anniversary of the next annual certification after the change. During periods of funding shortfall, HPD reserves the right to implement subsidy standard changes with at least 30 days' notice to affected families. Changes to HPD's subsidy standards will apply to all households in the HCV program except existing Project Based Voucher participants.

### **7.2.5 Exceptions to Subsidy Standards**

HPD may grant an exception to these subsidy standards if the exception is justified by the health or disability of family members. An HPD employee at the level of Director or higher must grant all such exceptions to this policy. All requests for exceptions must be made in writing and be submitted to HPD. All such requests must be accompanied with an HPD Reasonable Accommodation form completed by a licensed medical professional. HPD reserves the right to request that Reasonable Accommodation requests are resubmitted annually. HPD also reserves the right to accept other medical documentation from a licensed medical professional that establishes a clear connection between the exception being requested and the condition meriting accommodation.

HPD will automatically increase a voucher size only in cases where additions of household members are due to birth, adoption, marriage, domestic partnership, court-awarded custody or the presence of a live-in aide. Additions under other circumstances must be approved in advance by HPD.

Voucher holders may select a different size dwelling than that listed on the voucher as long as the maximum subsidy is based on the lesser of the payment standard for the unit size issued or the contract rent for the unit size selected.

The utility allowance used to calculate gross rent is based on the lower of (1) the voucher size issued to the family; or (2) the unit size of the unit selected by the family.

### **7.2.6 Exceptions to Payment Standards**

With HUD approval, HPD may implement exceptions to the payment standard to promote de-concentration of poverty.

Additionally, as a reasonable accommodation for households with disability, HPD may grant an exception to the payment standard up to 120% of the FMR. A reasonable accommodation may be requested as described in section 2.3 of the Administrative Plan.

## **8 HOUSING QUALITY STANDARDS**

HPD is required by federal legislation and HUD regulations to ensure that each unit occupied by a subsidized household is “decent, safe and sanitary.” To meet this requirement, HPD conducts a Housing Quality Standard (HQS) inspection prior to providing assistance on behalf of a client and biennially throughout the term of assisted tenancy. HPD reserves the right to conduct inspections more frequently. An HPD inspector trained in Housing Quality Standards will conduct inspections. Inspected units will receive a designation of “pass,” or “fail.”

### **8.1 Physical Standards**

In order to pass an HQS inspection, a unit must meet HPD standards on the following components:

- Sanitary facilities;
- Food preparation and refuse disposal;
- Space and security;
- Thermal environment;
- Illumination and electricity;
- Structure and materials;
- Interior air quality;
- Water supply;
- Lead-based paint;
- Access;
- Site and neighborhood;
- Sanitary condition; and
- Smoke and Carbon Monoxide detectors.

### **8.2 Bedrooms and Apartment Layout**

At a minimum, a dwelling unit must have a living room, a kitchen area and a bathroom. (Single Room Occupancy units are exempt from this requirement). A studio apartment is considered a living/sleeping room. The unit must also have at least one living/sleeping room for every two household members. Single Room Occupancy units may only house one person in the living/sleeping room. Each living/sleeping room must also have:

- Two working outlets; or one working outlet and one working light fixture; and
- A window if the room is used primarily for sleeping.

Payment standards are based on the legal bedroom size; i.e., sleeping quarters that are not technically bedrooms do not count as bedrooms determining payment standard.

### **8.3 Kitchen**

A kitchen area must be used primarily for the preparation and storage of food. It must have the following items:

- Oven and a stove with top burners. All burners must be working and all knobs to turn the burners on and off must be present (Single Room Occupancy units excepted). A microwave oven may be substituted for an owner-supplied oven and stove or range if the tenant agrees and if microwave ovens are furnished instead of an oven and stove or range to both subsidized and unsubsidized tenants in the building in order for such substitutions to be approved.
- A refrigerator of appropriate size based on the number of household members. For example, counter top or compact type refrigerators are insufficient for a family of four. The refrigerator must also maintain a temperature low enough to keep food from spoiling, and the freezer space must be present and in working condition;
- Storage: the kitchen must have space for storage, preparation and serving of food; and
- Kitchen sink: a kitchen sink must provide running hot and cold water from the faucet and have a properly-working drain.

### **8.4 Bathroom**

The bathroom must be contained within the apartment and have the following characteristics:

- An enclosed and operating toilet facility;
- A shower or tub with running hot and cold water;
- A permanently-installed washbasin (bathroom sink);
- One permanent light fixture in working condition; and
- A window or alternative adequate ventilation.

### **8.5 Other Rooms Used for Living**

Other rooms used for living are defined broadly, and include bedrooms, dining room, entrance hall, and corridor. If any of these areas are used primarily for sleeping, they must have a window; two working outlets; or one working outlet plus one working permanent light fixture.

### **8.6 Specific Apartment Items**

#### **8.6.1 Windows**

The windows should not show any signs of severe deterioration. The presence of any of the conditions listed below requires a failure rating. Severe deterioration means:

- Missing or broken panes;

- Dangerously loose, cracked panes (which present a cutting hazard);
- Windows that will not close;
- Windows that, when closed, do not form a reasonably tight seal and allow the outside elements (wind, snow, or rain) to enter; or
- Broken window balance.

### **8.6.2 Doors**

All exterior doors must be lockable, have no holes and have all trim intact. All interior doors must have handles, contain no holes and have all trim intact.

### **8.6.3 Walls and Ceilings**

Walls and ceilings may not show any signs of being structurally unsound or hazardous. The presence of any condition below is an automatic HQS failure. Unsound or hazardous means:

- Severe bulging, buckling, or leaning; or
- Large cracks or holes allowing drafts or rodents to enter; or
- Loose sections of plaster in danger of falling; or
- Presence of severe mold.

### **8.6.4 Floors**

In order to pass inspection, floors must not show any signs of being structurally unsound or hazardous. The presence of any condition below will result in an automatic HQS failure.

- Severe buckling or major movements under walking stress;
- Large sections of damaged or missing flooring [two square feet or more where floor beams are visible]; or
- Large cracks or holes allowing drafts or rodents to enter.

### **8.6.5 Electrical**

A unit must be free of electrical hazards and meet the following criteria:

- Kitchen - One working electric outlet and one permanently installed light fixture.
- Bathroom - One permanent light fixture. An outlet may be present but is not required. An outlet cannot be substituted for an overhead light fixture.
- Living Room and Bedroom - Two operating electrical dual outlets, or one operating dual outlet and one permanent overhead or wall mounted light fixture.

Electrical hazards that cause an automatic HQS failure include the following:

- Exposed, un-insulated, frayed wires;
- Missing switch covers;
- Overloaded circuits;
- Improper wire connections to outlets;
- Light fixtures hanging from electric wire with no other firm support; and
- Illegal wiring from building source to the tenant's unit.

#### **8.6.6 Heating**

The heating must have a direct or indirect heat source as defined below:

- Direct– Each room used for living must have a radiator, hot air register or a facility for baseboard heat.
- Indirect– If there is no heat source present in the room; heat must be able to enter the room from an adjacent heated room.

#### **8.6.7 Plumbing**

- The kitchen and bathroom must have hot and cold running water;
- The apartment should be free from major plumbing leaks; and
- The plumbing must be free from major corrosion that results in serious or persistent levels of rust in the water.

#### **8.6.8 Access**

- The apartment must have its own entrance;
- Steps of six or more to any entrance in the building must also have a handrail at least three feet high.
- Doors and windows that are accessible from the outside must have legal, working locks; and
- Double cylinder locks are considered an automatic HQS failure and a hazardous condition. Apartments or buildings with double cylinder locks are automatic failures.

#### **8.6.9 Exits**

- The apartment must have an unblocked, acceptable, alternative means of egress in case of a fire (e.g., fire escape, fire exit);

- Illegal window gates (gates that are located in front of fire escape windows and are locked with combination locks or key padlocks) are an automatic HQS failure.
- Legal window gates are located in front of fire escape windows and allow easy exit in case of an emergency. These types of gates do not have locks but have a mechanical lever that can be lifted and the gate pulled back in case of an emergency. Gates with a quick release system are permissible.

#### **8.6.10 Sanitary**

- The apartment must be free of severe infestation of vermin or roaches; and
- Sanitary facilities must be in proper operating condition and adequate for personal cleanliness and disposal of human and animal waste.

#### **8.6.11 Smoke Detectors**

- A smoke detector is required in every unit, except where exempted by local law. Building owners are responsible for installing the detectors in accordance with the law, while tenants are responsible for maintaining them in working order. The detector is to be located in the hall of the unit near the bedrooms and on every floor if the dwelling has multiple floors. The detector may be battery or hard-wire operated.
- If the detector is present but is inoperable (due to the need for a battery or if the tenant has removed the smoke detector for cooking purposes) the failure will be considered a tenant-caused deficiency.
- If a hearing-impaired person is occupying the dwelling unit, the detectors must have an alarm system designed for hearing-impaired persons as specified in the National Fire Protection Association Standards (NFPA) 74.

#### **8.6.12 Lead-Based Paint**

Federal lead-based paint requirements applying to the voucher program are codified at 24 CFR Part 35, subparts A, B, M and R. Owners must also comply with The NYC Childhood Lead Poisoning Prevention Act of 2003, also known as Local Law 1 of 2004, and HPD's implementing rules, which are available online at [www.hpd.nyc.gov](http://www.hpd.nyc.gov).

### **8.7 Emergency Conditions**

HPD, at its discretion, may determine certain HQS defects to be emergencies. The owner must repair these defects within 24 hours. The following list provides examples of the type of household defects that HPD considers emergency HQS failures. Depending on their severity, other conditions may be cited as emergency HQS failures requiring a

24-hr correction period including:

- Gas Leaks
- Smoking/Sparking electrical outlets or wiring; or
- Building in imminent danger of collapse.

## **8.8 Tenant Responsibility Defects**

HPD distinguishes between tenant responsibility to repair and owner responsibility to repair HQS defects on the inspection failure notices provided to both the tenant and owner. Unless provided for in the lease agreement, owners are not responsible for the correction of HQS defects that HPD determines are the tenant's responsibility to repair. Damages to the apartment in excess of normal wear and tear by a household member will be considered the tenant's responsibility to repair. HPD reserves the right to make a determination of the cause of any HQS deficiency following an inspection and discussion with both the owner and the tenant.

Examples of Tenant Responsibility to Repair Failures include:

- No electricity when the tenant is responsible for the payment of utilities;
- No gas to the unit when the tenant is responsible for this utility per the lease agreement.
- No heat in conformance with local code when tenant is responsible for this utility per the lease agreement;
- A fire escape blocked or exit blocked by tenant;
- The heavy accumulation of refuse or debris in the unit
- No battery in the smoke detector or the smoke detector is inoperable
- Not providing access to a specific room in the assisted unit

## **8.9 The Inspection Process**

### **8.9.1 General Policies**

There are six types of HQS inspections that the HPD Housing Choice Voucher program conducts:

- Initial inspection prior to entering into a HAP contract with an owner
- Biennial inspection
- Re-inspections to confirm that deficiencies have been corrected
- Verification Inspection
- Quality control inspection
- HQS complaint inspection

Inspections will be scheduled as required under 24 CFR Part 982 and this Administrative Plan. Additionally, inspections may be scheduled at the request of HUD, an applicant, a participant, an owner/managing agent, Housing Choice Voucher staff, or any other interested party.

The Housing Choice Voucher program will notify both the tenant and the owner of the scheduled inspection date. For occupied units, the tenant is responsible for providing access to the unit. If two scheduled HQS inspections are missed, HPD may terminate the family from the program for failure to uphold their family voucher obligations. For initial inspections of vacant units, owners are responsible for providing access and failure to do so may result in rejection of their Request for Tenancy Approval (RFTA—see Chapter 11 on General Leasing).

HPD inspectors will document on the appropriate form all defects that may cause the unit to fail to meet HQS standards, and will indicate whether those failures are deemed to be the owner or the tenant's responsibility to repair, or both. HUD regulation 982.404(a)(3) requires that the PHA verify that HQS failure items have been repaired. Therefore, a re-inspection of a unit with HQS failures is not a regulatory requirement provided that HPD can obtain verification through an alternative means. HPD will require re-inspections for tenant caused failure items. At other times at HPD's discretion and/or at the request of the owner or tenant, HPD will verify non-emergency failure items that the owner is responsible to correct through certifications signed by the owner. HPD reserves the right to require re-inspection or to accept self-certification for emergency failure items that are the owner's responsibility to correct.

If a unit fails an HQS inspection, notification of the failure and a list of the defects will be provided to the tenant and the owner, and a copy will go into the tenant's file. The failure letter will provide the owner (or tenant, if the defect is the tenant's responsibility to repair) with the date that the condition must be corrected by and certified as corrected. If applicable, the letter will also provide the date of the re-inspection of the unit. The letter will also notify the owner that HAP will be abated in accordance with HPD policies and HUD regulations if repairs are not corrected and certified as corrected within 24 hours in the case of emergency failures, or 30 days in the case of routine, non-emergency failures. If the unit fails re-inspection, Housing Assistance Payment is abated and the owner must notify HPD once the defects have been corrected.

### **8.10 Initial Inspections for New Program Units**

Initial inspections will be scheduled upon approval of a RFTA. An initial inspection that passes HQS will be valid for up to two years. However, HPD reserves the right to conduct a second inspection if the period between the initial inspection and execution of the HAP contract exceeds 60 days.

If the unit does not pass inspection, the owner will be notified of the defects. The participant or applicant will receive, when possible, notification of the failure and will have the option of either searching for alternative housing or waiting for the deficiency to be corrected if the owner indicates that the defect will be corrected within a reasonable time. It is the owner's responsibility to notify HPD that the failure has been corrected.

Access to vacant units for the initial inspection is the responsibility of the owner. If an owner misses two appointments, HPD may cancel the RFTA and allow the tenant to look for alternative housing with the time remaining on their voucher.

### **8.11 Biennial Inspections**

HPD must conduct an HQS inspection of each unit under contract at least biennially. HPD reserves the right to conduct inspections more frequently. HPD will notify the family in writing at least 10 days prior to the inspection. Two missed inspection appointments within a 12 month period by the family will be considered an HQS failure and violation of family obligations under the program, and will result in termination of assistance.

If the unit does not pass inspection, the owner and tenant will be notified in writing of the defects and the 30-day requirement to make the repairs, or 24 hours if emergency failures are involved. The notice will inform the owner that HAP payments will be suspended the first of the next month if the defect has not been corrected within 30 days or, for emergency failures only, within 24 hours. It is the owner's responsibility to notify HPD that the HQS failure has been corrected. HPD reserves the right to accept inspection results from "passed" alternate inspections as allowed under HUD Implementation of Fiscal Year 2014 Appropriations Provision on Public Housing Agency Consortia, Biennial Inspections, Extremely Low-Income Definition and Utility Allowances (FR-5778-N-01). Alternate inspections that may be accepted include inspections conducted by other agencies for HOME, Low Income Housing Tax Credit (LIHTC) or by HUD's Real Estate Assessment Center (REAC). With HUD approval, HPD may add to the list of alternate accepted inspections.

### **8.12 Special Inspections**

Tenants, owners and interested third parties may report HQS complaints to 311. HPD's Division of Code Enforcement will attempt to inform the owner of the reported failure conditions and then attempt to confirm with the tenant if conditions have been corrected. HPD will attempt to conduct an inspection if the tenant confirms that failure conditions remain. If HPD fails to gain access, the tenant will be notified to contact HPD and arrange an inspection should the failure conditions remain.

The Housing Choice Voucher program recommends that families immediately report hazardous situations to HPD's Division of Code Enforcement by calling 311 or 911 for immediately life threatening conditions. An HQS complaint inspection will be considered critical if the defect creates an immediately hazardous situation. Inspections by HPD's Division of Code Enforcement may be used to verify the existence or correction of an emergency hazard. If the defect endangers the family's health or safety, the owner will be required to make the repair within 24 hours. In these instances, HPD will provide the owner and tenant with written notification of the emergency, the 24-hour correction requirement and the possibility of the suspension of HAP payments if the repairs are not made. Payment suspensions will be effective the first of the month following the correction period.

HPD has the right to terminate a contract if another federal, state or city authority or agency inspects a unit and certifies that it is unsafe for the family.

### **8.13 No Access**

Tenants are required by Federal regulations to allow access to an inspector in order to conduct a HQS inspection. If a tenant fails to provide access to the entire apartment to an HPD inspector two times in a 12 month period, it is considered a breach of family obligation and may result in the termination of HCV housing subsidy to the family. If the tenant fails to provide access to a specific room, it will be considered a tenant caused failure.

If the tenant fails to provide access to an HPD inspector to verify that HQS violations have been corrected, HPD must take enforcement action (abatement for landlord caused failures and termination of subsidy for tenant caused failures).

### **8.14 Cancellation of a HQS Inspection by Tenant**

Once in a 12 month period, tenants may cancel a scheduled inspection with more than 48 hours' notice. Request for cancellation of an inspection with less than 48 hours' notice will not be honored. A tenant will not be allowed more than one opportunity to reschedule an inspection within a 12 month period without documentation of good cause.

### **8.15 Abatement of HAP and HAP Contract or Program Termination for HQS Failure**

For owner-caused non-emergency failures in occupied units, owners will be given the option of certifying the correction of HQS failure items. An HPD-provided Notice of Housing Quality Standards Failure (NOF) form must be completed and signed by the owner and submitted in its entirety to HPD via certified mail or in person at the local Code Enforcement borough office in which the unit is subsidized within 30 days of the failed inspection to avoid abatement on the first of the month following the 30-day correction period. Failure items or violations may also be certified through HPD's e-certification system.

If the owner does not certify the correction of the failures within 30 days, HPD will abate HAP. The HAP abatement will take effect the first of the month following the 30-day correction period and will continue until all HQS deficiencies have been corrected and verified via receipt of a self-certification form or a verification inspection.

Non-certifiable items such as tenant responsibility to repair failures will continue to be automatically re-inspected in 30 days for non-emergencies and in 24 hours for emergencies. For an initial/vacant unit, it is the landlord's responsibility to notify HPD that corrections have been made and to request a second inspection.

For units with owner caused emergency failures, if the owner fails to notify HPD that emergency failure items have been corrected, HAP will be abated on the first of the month following the initial 24-hour correction period. The owner must notify HPD in writing in order for a verification inspection to occur. If the unit then passes, retroactive payments will be made to the date the repairs were documented, so long as notification of repair occurs within 60 days of the repair.

If a vacant unit fails the verification inspection, HPD will cancel the RFTA per "Initial Inspections for New Program Units" (p. 8-7). For tenant-caused failures, if corrections are not made by the verification inspection, HPD will begin termination procedures, per "Tenant-Caused Failures" (p. 8-10).

HPD reserves the right to re-inspect any self-certified failure items for verification purposes. If a random re-inspection reveals that correction to a self-certified failure was not completed, the unit will fail inspection and HPD will abate payments retroactively to the first of the month following the original certification deadline for the failure item.

Self-certification is not accepted for the following failures types:

- Tenant Responsibility to correct failures
- If a tenant disputes that the defect has been corrected
- Vacant units
- Initial inspections

HPD reserves the right to accept Certification Statements from owners for Emergency Conditions.

## **8.16 Owner-Caused Failures**

When an owner fails to correct an HQS failure within the allotted timeframe, HPD will provide the owner with written notice that the HAP payment will be abated effective the first of the month following the correction period. A copy of the notice will also be sent to the tenant. The notice of abatement states that the tenant is not responsible for HPD's portion of any abated rent.

The abatement will continue until all HQS deficiencies have been corrected and verified via receipt of self-certification of HQS corrections or by re-inspection. It is the owner's responsibility to notify HPD that deficiencies have been corrected. If repairs are not made within 90 days (or less, as determined by HPD in more severe cases), HPD reserves the right to terminate the HAP contract. HPD will provide the tenant with at least 30 days' notice before the contract termination occurs. As funding allows, HPD will provide the tenant with a new voucher, provided that the family remains eligible for assistance and can provide evidence that the family is in good standing with the current lease requirements, including payments to owners. HPD may, at its discretion, waive the requirement for the tenant to document good standing with lease requirements when there is a compelling and urgent health or safety-related need that requires the tenant to move immediately.

If the defects are corrected after notification of contract termination but before the effective date, HPD may rescind the termination.

### **8.16.1 Tenant-Caused Failures**

When the tenant causes an HQS failure, HPD will provide the tenant with a notice of the defect and the required timeframe to correct the defect.

If the family causes a hazardous HQS failure requiring immediate correction, the family must correct the defect within no more than 24 hours at the family's expense. For other

family-caused defects, the family must correct the defect within no more than 30 calendar days. If defects are not corrected within the above timeframe, HPD will follow its termination of subsidy procedure to terminate the tenant's participation in the program.

#### **8.16.2 No Access to Landlord for Repair of HQS Violations**

If the tenant fails to allow access to a landlord in order to make repairs, a landlord must document at least two attempts to gain access. HPD requires that landlords send a tenant at least one certified mailed letter in order to document attempts to gain access to the unit.

Once owners submit documents to the HQS unit, HPD will send tenants a notice urging them to provide access to the owner in order to make repairs. The family will not be granted an emergency move voucher based on HQS failure if they do not allow access to the landlord in order to make repairs. Once the repairs are made and the repairs have been verified by HPD staff, HPD may allow retroactive payment of HAP (if abatement has been placed) to the date the owner documented an attempted access to make repairs.

## **9 RENT REASONABLENESS DETERMINATIONS**

### **9.1 General Policy**

HPD will not approve a lease until it has been determined that the initial rent to the owner is a reasonable rent. During the initial term of the lease, the owner may not raise the rent. Furthermore, the contract rent must be reasonable during the whole course of the assisted tenancy in the voucher program. The term “reasonable” means that the owner’s proposed rent is within a range of rents that appropriately reflects the market conditions of a particular neighborhood in the city considering all of the relevant factors specified in 24 CFR part 982.507 and listed below. In all cases, the rent to owner may not exceed the rent charged by the owner for comparable unassisted units on the premises (including rent stabilized and rent controlled units).

### **9.2 When and How Rent Reasonableness Determinations Are Made**

Rent reasonableness determinations are made:

- When units are placed under HAP contract for the first time;
- When owners request annual or special contract rent adjustments;
- If there is a 5% decrease in the published Fair Market Rent (FMR) published by HUD in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect one year before the contract anniversary;
- If directed by HUD; and
- Whenever HPD deems necessary.

HPD will determine that the proposed rent:

- Is reasonable in relation to rents for similar units in the private market; and
- Does not exceed rents charged by the owner for comparable, unassisted units in the premises.

HPD’s reasonable rent determination will consider:

- Location,
- Quality,
- Size,
- Unit type,
- Age of the unit,
- Amenities,
- Housing services,
- Maintenance, and
- Utilities provide by the owner.

Each participant file will contain documentation that a rent reasonableness review has been conducted for the assisted tenancy, except in cases such as conversion projects

where rent reasonableness studies are conducted for entire developments and documentation is kept separately.

### **9.2.1 Limitations Upon Rent Subsidy- Maximum Family Share**

The maximum family share at initial occupancy is a limitation on approved rent. At the time that a family initially receives assistance in a Housing Choice Voucher approved unit, if the gross rent for the unit exceeds the applicable payment standard, the family share of the rent may not exceed 40% of the monthly adjusted income. Request for Tenancy Approvals (RFTAs) submitted by families that would violate this family share requirement will not be approved.

### **9.2.2 Rent Reasonableness Methodology**

For all units receiving regular Housing Choice Voucher subsidy, HPD will perform rent reasonableness as follows:

1. HPD will review the rental information provided by the owner in the Landlord Package, and form HUD-52517, RFTA;
2. HPD will compare the requested rent amounts with comparable market rate unassisted units. HPD will obtain comparables from sources such as rent rolls, leases provided by the owner, online databases, the New York City Housing and Vacancy Survey, newspaper listings, and any other independently verifiable source of information.

Owners must provide to HPD any information requested by HPD on rents charged by the owner for other units in the premises or elsewhere. Owners that do not comply with HPD requests for information will have their RFTA rejected and will be notified in writing with a copy to the family.

### **9.2.3 Rent Regulated Apartments**

In rent reasonableness determinations for rent regulated units, the legal rents must be confirmed by the authorizing agency (DHCR, HUD, and HPD). HPD will not approve rents that exceed the legal rent amounts. Further, HPD will not approve rents for regulated units if market rate comparables do not substantiate the requested amounts.

### **9.2.4 Annual Adjustments to Rent – Rent Increases**

After the completion of the initial term of the lease, owners may request an adjustment in the approved rent once per year. Requests must be made at least 60 calendar days before the proposed effective date of the rent increase (a form is available on the HPD website for this purpose). All rent increases are subject to funding availability, and HPD may not approve a rent increase to an owner if the unit fails HQS due to landlord-caused deficiencies.

For all units, HPD will perform a rent reasonableness analysis using the same methodology as for approving initial rents. The adjusted rent to the owner will equal the lesser of:

- The reasonable rent as determined by HPD;
- The amount requested by the owner;
- And if granted approval by HUD, the rent adjusted by the annual adjustment factor published by HUD

HPD will notify both the owner and the participant in writing when HPD has approved a rent increase request. If an increase is approved, the owner must provide HPD with a copy of the new lease executed by both parties.

Owners that do not comply with HPD requests for information will have their rent increase request rejected.

### **9.2.5 Annual Adjustments to Rent – Rent Reductions**

In rent-regulated units, should the governing agency issue a rent reduction order, owners must report these decreases to HPD within 30 days. HPD will conduct a rent reasonableness review and adjust unit rent accordingly.

In any case where HPD becomes aware that the current rent exceeds the maximum allowable rent for a unit, HPD may complete a rent reasonableness determination and reduce unit rent accordingly.

## 10 TENANT SHARE AND SUBSIDY DETERMINATIONS

### 10.1 Calculating Family Share

Families will pay the highest of the following amounts, rounded to the nearest dollar:

- 30% of the family's monthly adjusted income;
- 10% of the family's monthly income;
- If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs (including tenant-paid utilities), the portion of those payments which is so designated
- \$50 (the "minimum rent" or the minimum total tenant payment established by HPD).

For tenants who are responsible for paying for their own utilities, their share is first applied to the utility expense, up to the amount of the utility allowance in effect, and the remainder goes to the owner as rent. If the utility allowance exceeds the tenant share, HPD will pay the difference in the form of a Utility Assistance Payment (UAP). HPD reserves the right to make this payment directly to the utility company or make payments on a quarterly basis.

HPD will grant an exception to the minimum rent requirement or quarterly payments of utility assistance (UAP) if the family is unable to pay the amount because of financial hardship as defined below:

- When the family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program, including a family that includes a member who is a non-citizen 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;
- When the family would be evicted because it is unable to pay the minimum rent or is at risk of a turn-off;
- When the income of the family has decreased because of changed circumstances, including loss of employment;
- When a death of an income earner in the family has occurred; or
- Other circumstances determined by HPD or HUD on a case-by-case basis.

### 10.2 Enhanced Vouchers

HPD will calculate rent payments for families receiving enhanced HCV assistance as described in 10.1 except in the case of the \$50 minimum rent. Families receiving Enhanced HCV assistance have a special statutory minimum rent requirement that provides that they pay *the greater of 30% of their income or the amount they were paying toward housing payments (rent plus utilities, if applicable) at the time of conversion, even if it exceeds 40% of the family's adjusted monthly income..* (See Chapter 19, Enhanced Vouchers, Minimum Rent.)

### **10.3 Maximum Family Share at Initial Occupancy**

In instances where the initial gross rent of the unit exceeds the applicable HPD payment standard for the family, the family share of the rent must not exceed 40% of the family's adjusted monthly income. This provision applies only to the initial occupancy of the family in a new unit (including moves). This provision does not apply to conversions under HUD Notice PIH# 2001-41 (including Enhanced Voucher Conversions).

### **10.4 Payment Standards**

The payment standard is the maximum monthly subsidy HPD will pay for units, according to the number of bedrooms in the unit. It can be no less than 90% and no more than 110% of the HUD-determined Fair Market Rent (FMR) for the New York City metropolitan region.

HPD may establish the payment standard amount for a unit size at any level between 90 percent and 110% of the published HUD Fair Market Rents (FMR). Based on funding availability and other relevant considerations, HPD may periodically revise the payment standard amounts and FMR percentages. HPD will post a notice on its website thirty (30) days in advance of payment standard revisions. HPD and NYCHA may establish different payment standards. HPD and NYCHA generally will collaborate on requests to HUD for exception payment standards if warranted.

#### **10.4.1.1 Increase in Payment Standard**

If the payment standard amount 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 at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard.

#### **10.4.1.2 Decrease in Payment Standard**

A decrease in the payment standard amount will be applied on the anniversary of the first regularly scheduled recertification following the decrease (second annual recertification after the effective date of the decrease in payment standard). With HUD approval, HPD reserves the right to apply HPD's new payment standard with a minimum of 60 days' notice to the family.

### **10.5 Change in Family Voucher Size**

Households may experience a change in the size of the voucher they are issued. These changes may be a result of change in household composition or changes to HPD's subsidy standards.

### **10.5.1 Decrease in Family Composition**

Households whose family composition decreases may have their voucher size reduced at the next regularly scheduled annual recertification. Decreases can occur for a variety of reasons including death, divorce, or household members leaving the current address. In such cases, the head of the household will be required to provide documentation of a decrease in family size. Documentation will depend on the reason for the household change but could include certificate of death, divorce, or proof of a new address for a former member of the household. If other documentation is not available, HPD will use its discretion to assess whether alternative documentation can be used to show that the former household member no longer resides in the subsidized unit.

At the time of annual certification, an assisted family will receive notice if they are occupying a unit that is larger than the voucher size issued to the family. The payment standard for the household will be reduced to the one associated with the family's new voucher size at the one year anniversary of the regularly scheduled annual certification. If the family is residing in a unit larger than that approved according to their family size, the family will be required to pay the additional cost out of pocket to remain in the oversized unit.

### **10.5.2 Increase in Family Composition**

If there is an increase in family size, the voucher size will also be adjusted based on HPD's subsidy standard at the regularly scheduled annual certification after the family reports the change. At the same time, the payment standard will be updated to the one associated with the new voucher size.

Household members may only be added after HPD approval except in instances of domestic partnership, marriage, birth or adoption. For any member to be added to the household, required documentation must be provided by the family.

### **10.5.3 HPD Subsidy Standard Change**

In addition to departure or addition of household members, the voucher size for assisted households may change as a result of changes to HPD's subsidy standards.

## **10.6 Application of Utility Allowances and Payment Standards**

The utility allowance that applies for a household when their initial lease is approved is the utility allowance in effect when the lease is approved and executed by the tenant and owner. The utility allowance that applies for a household when a scheduled recertification occurs is the utility allowance in effect when the recertification is complete. When utility allowances have been revised/updated, the revised/updated allowances will be applied to the family's rent and subsidy calculations at the first regular recertification after the allowance is adopted. With HUD approval, HPD reserves the right to apply the new standard with a minimum of 30 days' notice. For example, during an interim recertification, if the utility allowance was revised since the last regular recertification, HPD would apply the new utility allowance.

The payment standard that applies for a household when their initial lease is approved is the payment standard in effect when the lease is approved and executed by the tenant

and owner. The payment standard that applies for a household when a scheduled recertification occurs is the payment standard in effect when all recertification documents have been received and the recertification information is entered into the computer system. The payment standard that applies to a household during an interim recertification is the payment standard which was in effect at the last regular recertification. With HUD approval, HPD reserves the right to apply changes to the payment standard with a minimum of 30 days' notice to affected families.

## **11 GENERAL LEASING POLICIES AND HOUSING ASSISTANCE PAYMENT (HAP) CONTRACT**

### **11.1 Initial Steps in the Leasing Process**

When a family finds a suitable unit and the owner is willing to lease the unit under the program, the family must submit to HPD, prior to the expiration of the voucher:

- A completed Landlord Package, including a completed Request for Tenancy Approval (RFTA);
- A copy of the proposed lease, including the HUD-prescribed tenancy addendum;
- A copy of the shareholder's agreement or deed, in the case of an owner occupied unit (e.g., Mitchell Lama Co-op).

Both the owner and voucher holder must sign the RFTA (except in cases where the owner signs a building-wide RFTA), and the family may not submit more than one RFTA at a time.

HPD will review the proposed lease and the RFTA to determine whether they can be approved. The following factors are considered:

- Whether the unit is an eligible type of housing;
- Whether the unit meets HUD's Housing Quality Standards and Space Standards;
- Whether the rent is reasonable;
- Whether the security deposit is approvable in accordance with federal regulation;
- Whether the proposed lease complies with HUD and HPD requirements; and
- Whether the owner is approvable and there are no conflicts of interest.

#### **11.1.1 Eligible Housing Types**

All structure types can be utilized in the HCV program, including, but not limited to:

- Single-family;
- Duplex;
- Triplex;
- Fourplex;
- Garden apartments;
- Townhomes;
- Walk-up apartments;
- Highrises;
- Manufactured homes where the tenant leases the dwelling and the pad;
- Group residences;
- Single room occupancy (SRO) dwellings;
- Shared housing;
- Cooperative housing (including mutual housing) subject to the specific requirements of the cooperative by-laws and restrictions; and
- Congregate housing facilities.

HPD may not allow a voucher holder to lease a unit that is receiving project-based Housing Choice Voucher assistance or any duplicative rental subsidy.

### **11.1.2 Initial Family Share of Rent**

At the time that a family initially receives assistance in a Housing Choice Voucher approved unit, if the gross rent for the unit exceeds the applicable payment standard, the family share of the rent may not exceed 40% of the monthly adjusted income. RFTAs submitted by families that would violate this family share requirement will not be approved.

### **11.1.3 Disapproval of the RFTA**

If HPD determines that the RFTA cannot be approved, the landlord and the family will be notified in writing unless verbal notification will suffice based on the reason for the disapproval.

When the RFTA is disapproved, HPD will provide the family with another RFTA form so that they can continue their search for eligible housing.

### **11.1.4 Screening of Applicants for Family Behavior or Suitability**

Placing a family on the waiting list or selecting a family for participation in the program is not a representation by HPD to prospective owners about the family's expected behavior or suitability for tenancy. Tenant screening and selection are the responsibility of the owner. HPD encourages owners to consider a family's background with respect to such factors as:

- Payment of rent and utilities;
- Care of unit and premises;
- Respect for the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that threatens the health, safety or property of others; and
- Compliance with other essential conditions of tenancy.

To assist prospective owners in determining the suitability of applicants, HPD may provide the following information:

- The household's current and prior address; and
- The name and address, if known, of the landlord at the household's current and prior address.

HPD will make an exception to this requirement if the family's whereabouts must be protected due to domestic violence or witness protection.

HPD will provide the same information for all families as that provided to owners. HPD will not provide any additional information about the applicant household but will assist owners, when requested, in referring them to public information resources that may be helpful in determining suitability for tenancy.

## **11.2 The Lease and Tenancy Addendum**

### **11.2.1 Form of Lease**

All private leases submitted for Housing Choice Voucher assistance must comply with state and local law, include the HUD-required tenancy addendum as an attachment and be reviewed and approved by HPD staff. Owners that require assistance in drafting a legally permissible lease will be encouraged to purchase a standard lease agreement, such as the Blumberg lease form, that can be found at <http://www.blumberg.com>. Leases that conform to requirements for rent-regulated units will also be accepted by HPD as a standard form of lease. HPD will use a model lease as a substitute for a standard lease form only in very limited cases.

The lease must contain:

- The name of the owner and tenant;
- The address of the unit rented (including the apartment number);
- The term of the lease (initial and any provisions for renewal);
- The amount of the monthly rent to owner; and
- Specifications concerning which utilities and appliances are to be supplied by the owner and which are to be supplied by the family.

### **11.2.2 Initial Lease Term**

Initial lease terms in the voucher program will be for a minimum of twelve months unless HPD approves a shorter term. Shorter lease terms will generally only be approved to improve housing opportunities for the tenant or if shorter-term leases are the prevailing local market practice.

In accordance with 24 CFR Part 982.309, for participants that lease in-place, HPD may approve an initial lease for Housing Choice Voucher tenancy that is shorter than 12 months to accommodate an owner's allowable rent increase under rent regulation law.

In certain limited circumstances, HPD may also grant an initial lease term shorter than one year to accommodate development programs that require the temporary relocation of eligible tenants during building renovation.

Existing leases can be terminated and reissued to match the date of the HAP contract, if mutually agreed upon by both landlord and tenant.

### **11.2.3 Lease/HAP Renewal in Rent-Regulated Units**

Once an owner has accepted a participant's Voucher and signed a Housing Assistance Payment Contract that establishes a Housing Choice Voucher tenancy in a rent-regulated unit, HPD considers that the owner has agreed to the acceptance of the tenant's Housing Choice Voucher for subsequent lease renewals, so long as the tenant must be offered a renewal lease.

#### **11.2.4 Right to Remain—Conversions and Opt-Outs**

On conversion from the Mod Rehab program, Mitchell-Lamas and other project-based assistance programs, owners may not terminate the tenancy of a family as long as the unit is used for rental housing, and the unit is otherwise eligible for HCV assistance, except for serious and repeated lease violations, or other good cause. Owners may not refuse to honor the family's voucher to lease in place. Serious and repeated lease violations for rent-regulated leases are typically established through Housing Court actions.

#### **11.2.5 Changes in Lease**

If a tenant and owner mutually agree to alter the current lease agreement, any changes must be in writing, dated, and signed by both parties. The owner must provide a copy of the updated lease to HPD. HPD will approve any mutually agreed-upon alterations in a lease, as long as the lease still complies with HUD requirements.

A new RFTA, lease and HAP contract are required for:

- Changes in tenant/owner supplied utilities;
- Changes governing the term of the lease; and
- If a family moves to a new unit even in the same building or complex.

A new lease and HAP contract are **not** required when the family composition changes or the amount of rent to the owner changes.

#### **11.2.6 Separate Agreements**

Owners and tenants may execute separate agreements for services, appliances, and other items or amenities outside those that are provided under the lease, if the agreement is in writing and approved by HPD.

Any appliance, service or other item that is routinely provided to unassisted tenants on the premises or permanently installed in the unit may not be placed under a separate agreement and must be included in the lease. To qualify for a separate agreement, the service, appliance or item must be an optional amenity.

A tenant's failure to perform under a separate agreement has no effect on the tenant's rights under the lease, and cannot be a cause for eviction.

If the tenant and owner agree on charges for an additional item, as long as those charges are reasonable and not a substitute for a higher rent, HPD will permit them. All agreements for special items or services must be attached to the lease approved by HPD. If agreements are executed at a later date, they must be approved by HPD and attached to the lease.

### **11.2.7 Security Deposits**

The owner may collect a security deposit from the tenant. HPD may prohibit security deposits in excess of private market practice or in excess of amounts charged by the owner to unassisted tenants. HPD may not pay for security deposits or any other additional costs outside of rent and utilities.

### **11.3 Housing Assistance Payment (HAP) Contracts**

Per HUD regulations, HAP contracts will be executed after the following events:

- Tenant is issued a voucher;
- Tenant locates a unit prior to voucher expiration;
- Rent reasonability test is conducted and rent is determined eligible;
- Landlord package is approved and landlord has been validated to receive payments; and
- Unit passed HQS inspection.

The effective date of a HAP contract will be at least seven days after the HAP generation date and will be on either the 1<sup>st</sup> or the 15<sup>th</sup> of the month.

HPD will make every effort to execute the HAP contract before the commencement date of the lease term. The HAP contract may not be executed more than 60 days after commencement of the lease term and no payments will be made until the contract is executed. If an executed HAP contract is not returned to HPD within this 60-day term, the contract will be null and void and the tenant will be issued a voucher to move. This policy includes contracts that may have been executed by the owner but were not returned within the 60-day term. There will be no exceptions to this rule.

#### **11.3.1 HAP Payments**

After a HAP contract has been executed, HPD will begin to make payments to the owner. Payments for HPD's Housing Choice Voucher program are made by the New York City's Comptroller's Office in accordance with the terms of the HAP contract. Prior to the beginning of every month, HPD forwards a copy of the HAP register for the entire program to the Comptroller's Office for processing. Checks are subsequently mailed from the Comptroller's Office on the first of every month following confirmation of all payment information. HPD deems payment as received five calendar days after the payment is mailed by the City.

Individual HAP registers, which provide detailed information on the amount of HAP payment for every Housing Choice Voucher family under lease to an owner, are mailed by HPD on or about the first of every month in a separate envelope.

HPD also processes through the Comptroller's Office, additional HAP registers during the month as necessary. These adjustment runs typically account for regular HAP payments that begin mid-month and arrears payments due to owners for items such as retroactive rent increases.

### **11.3.2 Overpayments**

In accordance with the terms of all HAP contracts, if HPD determines that the owner is not entitled to any part of the HAP the Agency may exercise rights and remedies including deducting the amount of overpayment from any amounts due the owner (including amounts due under any other Housing Choice Voucher assistance contract), recovering payments, suspending future payments, or terminating the HAP contract. HPD may seek additional relief by judicial order or action, including specific performance, other injunctive relief, or order for damages.

Examples of overpayments that may occur include:

- Payments made when a unit is under HAP abatement because of HQS violations, or a HAP contract has been terminated for HQS violations;
- Payments made for a unit vacated with or without the knowledge of the owner; This policy does not apply to HAP payments for the month of the move-out as described below. HPD may recoup any amount due for the period that a tenant did not reside in the Housing Choice Voucher unit;
- Payments mistakenly made twice in one month because of a record-keeping or other error; and
- Change of ownership.

In all of these examples, the owner would owe HPD the portion of the HAP to which he/she is not entitled.

### **11.3.3 Termination of Contract and Payment**

Housing assistance payments terminate if:

- The lease is terminated by the owner in accordance with the terms of the lease;
- The lease terminates and is not renewed;
- The HAP contract terminates; or
- HPD terminates assistance for the family.

If an owner has commenced the process to evict the tenant, and if the family continues to reside in the unit, HPD must continue to make housing assistance payments to the owner in accordance with the HAP contract until the owner has obtained a judicial determination allowing the owner to evict the tenant. HPD will continue such payments until the family is evicted from the unit or moves out. Payments will be pro-rated to eviction date.

### **11.3.4 Family Move-out**

If the family moves out of the unit, HPD may not make any HAP payment to the owner for any month after the month when the family moves out. The owner may keep the HAP for the month when the family moves out.

## **12 OWNERS**

### **12.1 Definition of Owner**

An owner is defined as any person or entity legally authorized to lease or sub-lease the subject dwelling unit. A principal or interested party in a partnership or cooperation will be considered an owner, if authorization to act on behalf of the partnership, corporation, etc. is provided. Proof of ownership is required for participation in the program and must be submitted by providing a copy of the deed or title registered with the City Register, or a copy of the tax receipt verifying payment of local property taxes for the assisted property.

### **12.2 Disapproval of Owner**

HPD will not approve a Housing Choice Voucher assisted tenancy if HUD or another party has informed HPD that the owner is debarred, suspended, or subject to limited denial of participation. HPD must also not approve a Housing Choice Voucher assisted tenancy under the following circumstances:

- The federal government has instituted an administrative or judicial action against the owner for a violation of the Fair Housing Act or other federal equal opportunity requirements and such action is pending;
- A court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements;
- The owner is a parent, child, grandparent, grandchild, sister or brother of any voucher family member residing in a unit that they own. HPD may waive this restriction as a reasonable accommodation for a family member who is a person with a disability. Exceptions to this rule must be approved at the level of Director or above.

HPD may use its discretion to disapprove an owner for a Housing Choice Voucher assisted tenancy under the following circumstances:

- Violations of obligations under one or more HAP contracts;
- History of Housing Maintenance Code "C" violations;
- Acts of fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
- Participation in any drug-related criminal activity or any violent criminal activity;
- Current or previous practice of non-compliance with HQS and/or state and local housing codes or with applicable housing standards for units leased under any other federal housing program;
- Current or prior history of refusing to evict Housing Choice Voucher program or other assisted housing tenants for activity by the tenant, any member of the household, a guest, or another person under the control of any member of the household that: threatens the right to peaceful enjoyment of the premises by other residents; threatens the health or safety of residents, HPD employees, or owner employees; threatens the neighbors' health or safety, or neighbors' right to peaceful enjoyment of their residences; or engages in drug-related criminal activity or violent criminal activity;
- The owner has engaged in or threatened abusive or violent behavior toward HPD personnel; and

- The owner fails to pay state or local real estate taxes, fines, or assessments.

Any owner that has entered into a legal agreement with HPD to pay outstanding obligations may be approved for participation in the voucher program. This decision will be made on a case-by-case basis and must be approved by an employee at the level of Director or higher.

### **12.3 Change in Ownership**

HPD may approve the assignment of a HAP contract at the old owner's written request. HPD may also deny approval of assignment of the contract to the new owner for any of the reasons listed above. To assign the HAP contract, the new owner must submit a City of New York Substitute Form W-9, tax identification number documentation, a copy of the property deed, and a completed Request for Assignment of HAP Contract to the Owner Services Unit.

HPD will process a change of ownership only if the written request is accompanied by proper documentation of ownership of the property in question (copy of the deed or title) and proper documentation of the new ownership. The request and documentation must be submitted 30 days prior to closing. If an owner fails to request the change in ownership within 30 days of the transfer of property, HPD may choose to provide only 60 days in retroactive payments to a new owner.

If HAP payments have been issued to the old ownership after the date of the sale, HPD will request an affidavit attesting to how those payments were handled by seller and purchaser.

## 13 ANNUAL AND INTERIM RECERTIFICATIONS

### 13.1 Annual Recertification

HPD conducts annual recertifications of income and family composition by mail and/or in person. HPD may elect to conduct a recertification of income and family composition more frequently than annually. Generally, at least 90 – 120 days in advance of the scheduled annual recertification date, HPD will send a recertification package to the head of household. The package contains documents, as identified below, that the tenant and associated third parties must complete for verification purposes. In general, verification documents should be dated no more than 60 days prior to the date the application is returned. In cases where income and asset information is reported quarterly or semi-annually by a third party, the most recent statement will be acceptable (see Chapter 6: Verification):

- Housing Choice Voucher recertification declaration form;
- Authorization for the Release of Information/Privacy Act Notice;
- Declaration of Employment Status;
- Declaration of All Income;
- Verification of Wages;
- Verification of Assets;
- Verification of Un-reimbursed Medical and Pharmacy Expenses;
- Verification of Un-reimbursed Disability Expenses;
- Verification of student status;
- Verification of Absent Parent;
- Bank account verification;
- Verification of child care expenses;
- Request to Add a Household Member; and
- Request to Remove a Household Member.

The entire package, including all required third party verifications, must be returned to HPD on or before the return date printed on the package, or within **30 calendar days of receipt** by the participant, which is deemed by the Housing Choice Voucher program to be five calendar days after mailing. If HPD has not received the package within this timeframe, HPD will send the tenant a “Pre-Termination Notice of Section 8 Non-Compliance,” along with a “Request for Conference” form. Participants will be given 15 calendar days from the date of the notice to request a conference at which they will be granted the opportunity to meet with HPD staff to resolve any outstanding matters that prevent HPD from determining their eligibility for a Section 8 rent subsidy (see Chapter 15).

HPD will accept partially completed packages if the tenant is in the process of obtaining income documentation. If third party verifications have not been completed and returned to the agency, HPD will attempt to verify information through various means.

HPD will analyze and verify all information included in the recertification package, recalculate the family share of the rent and notify both the tenant and the owner of the new rent amount to be paid by the tenant and new housing assistance payment to be made to the owner (if applicable). This notice, or “rent breakdown letter,” will include effective dates of the new HAP amount, family share and new rent to owner.

If the family fails to respond or inadequately responds to a pre-termination notice, a termination notice will be sent that provides information concerning appeal procedures to contest the decision. Terminations will become effective the last day of the month following the date a termination notice has been sent.

### **13.2 Interim Recertification**

Participants are required to report all changes in their household composition within 30 days of the change, at their next annual recertification and at HPD's request. Participants are required to report any increases of income in the household at their next annual recertification and at HPD's request. Participants may elect to report decreases in income at any time. When a participant reports a change in household size or a decrease in income outside of the annual recertification, the date of the notification will be noted and the participant will be advised to visit the HPD to complete a form and submit verification of the change.

An interim recertification will be conducted for changes in household size or decreases in income reported prior to the annual recertification. HPD may elect to conduct an interim certification as needed to reflect changes in income detected through EIV. In this instance, HPD may send a recertification package for completion and submission. HPD will not reduce the family share of rent when the family reports a loss of welfare benefits due to fraud or a failure to participate in self-sufficiency or work activity. HPD may also elect to conduct an interim certification as needed to reflect changes in income for Family Self-Sufficiency participants, households reporting a replacement of their prior income, or households whose income is less than \$2,000.

### **13.3 Recalculating Family Share and Subsidy Amount**

HPD will notify the participant and the owner of any changes in the tenant share of the rent and the housing assistance payment as follows:

#### **13.3.1 Increases in Tenant Share of Rent**

Increases in the family's share of the rent will become effective the first day of the month following a full 30-day notice. If there has been misrepresentation of income by the tenant, HPD may make the rent change effective on the first day of the month following completion of the recertification (no 30-day notice provided), or retroactive to the date it would have been effective had it been reported in a timely manner. The family will be liable for any overpaid housing assistance payment and may be required to sign a repayment agreement.

#### **13.3.2 Decreases in Tenant Share of Rent**

Decreases in the tenant share of rent will become effective on the anniversary date of the annual recertification, or, the first day of the month following the date any interim change was reported with sufficient verification documentation. . If sufficient documentation of a decrease in income is provided but the scheduled recertification effective date is more than 30 days in the future, HPD may complete an interim certification on the first day of the following month. If a recertification package is not complete by the anniversary date, the rent change will be effective the first of the month following submission of all required documents.

### **13.3.3 Increase in Family Size**

A family must obtain HPD approval of any additional family member before the new member occupies the unit except for additions by marriage, domestic partnership, birth, adoption, or court-awarded custody in which cases the family must report these additions in within 30 days of the event. Approval from landlord or management of an addition to the household is not required.

If a unit does not meet HQS standards due to an increase in family size, HPD will issue a new voucher to the family, as funding allows, and the family will be required to relocate to an appropriately sized unit.

Families that add members and qualify for a larger voucher size will also be provided a new voucher size if funding is available, and will be provided the opportunity to move. However, unless the addition of the family member(s) results in the HQS violation described above, the family will not be required to relocate.

### **13.3.4 Decrease in Family Size**

Decreases in family size must be reported within 30 days of the decrease. When the family size decreases, the new family size must be used to determine the payment standard amount for the family beginning at the family's first regular recertification following the change. With HUD approval, HPD reserves the right to implement the new payment standard with 60 days' notice to the family. If the family is "overhoused" according to HPD subsidy standards, the family will be required to relocate to an appropriately sized unit or pay the additional cost out of pocket to remain in the oversized unit. Owners in the Enhanced Voucher program must report vacancies to HPD as they occur but at least quarterly. Owners must prioritize housing overhoused residents before leasing available units to any other residents.

If the family failed to report a change in composition within 30 days, any difference in the allowable subsidy due to a reduced voucher size may be charged to the family retroactively from the first day of the month following the change and a new voucher will be issued to the family immediately, if funding is available. HPD also maintains the right to terminate assistance to the family for failure to report the change in family composition.

If an assisted family breaks up, HPD has broad discretion to determine who remains in the program. Either household may retain the voucher if there is mutual consent or a court-stipulated determination as to which household retains assistance.

## **14 MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY**

### **14.1 Moves**

A family is not permitted to move during the initial lease term. Thereafter, families may request to move only once every 12 months. Requests may be approved as funding allows and if:

- The assisted lease for the old unit has terminated by mutual agreement of the owner and the tenant, or by HPD action of terminating the HAP contract;
- The tenant is not in the process of subsidy termination with HPD and the owner has given the tenant a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the tenant; or
- The tenant has given notice of lease termination (if the tenant has a right to terminate the lease on notice to the owner, for owner breach or otherwise).

HPD may deny permission to move if:

- The family has violated a family obligation;
- The family owes HPD money; or
- The family owes the landlord money.

#### **14.1.1 Exceptions to Move Policy**

HPD may grant an exception to these restrictions in an emergency situation, or if the family meets special circumstances associated with certain local preference categories (see Chapter 2, Violence Against Women Act for more information). HPD may also grant an exception if the family becomes overcrowded, as defined by HUD's HQS standards, or if the apartment has two consecutive HQS failures caused by the landlord.

Moves within a building or a managed group of buildings – also referred to as transfers – may be scheduled at different intervals than every 12 months, at the discretion of HPD, if the family and owner are both in agreement and provide the required documentation to HPD for approval prior to transfer.

#### **14.1.2 Move Procedures**

Families that wish to move must follow the procedures presented below:

- The family must submit to HPD a request to move in writing;
- The family must provide proof that they are in good standing with their rent. Proof can come in the form of a general release letter from the landlord, or proof of rent payments (e.g., cancelled checks). HPD may, at its discretion, waive the requirement for the tenant to document good standing with lease requirements when there is a compelling and urgent health and safety-related need that requires the tenant to move immediately;

- If HPD has not recertified the family's income and composition within the past six months, the family will be required to complete a recertification package. The annual recertification date will be changed to coincide with the new lease effective date;
- Families that are eligible to move will be issued a move package that contains a Housing Choice Voucher briefing booklet, a Housing Choice Voucher, an apartment listing and search log, and an HPD landlord package;
- The family may conduct a search for new housing. If the family does not locate a new unit, they may remain in their current unit so long as the owner permits;
- Families may not move or transfer out of an assisted unit to a new unit with continued assistance until they receive written approval from HPD.

With HUD approval, during times of limited funding availability, HPD may restrict moves with continued assistance to units with a contract rent that is the same or lower than the previously assisted unit. During such times, families may only move to units that have a similar or lower rent than the previously assisted unit.

Once HPD has determined that funds are available, HPD will inform those households who were previously denied due to funding availability that they are eligible to move. Participants must follow the move procedures outlined in Section 14.1.2 above.

In a move, assistance stops at the old unit at the end of the month in which the tenant moved out, unless proper notice was provided to end the lease otherwise. Assistance will begin on the new unit on the effective date of the lease and HAP contract. Assistance payments may overlap for the month in which the family moves. Failure to complete the move process once the HAP contract is signed is a violation of family obligations under the tenancy addendum, and may result in termination of subsidy.

If a tenant who has requested a move and processed the necessary paperwork to change units subsequently decides not to move, or if their move is delayed, s/he must notify HPD immediately so that current and future landlord accounts can be properly credited. Tenants who fail to notify HPD after such change of plans may be denied future move requests. Per federal regulations, it is a violation of family obligations to legally occupy two units and HPD will consider this act as grounds for termination.

HPD will process all move requests in the order that they are received, but reserves the right to prioritize requests depending upon special circumstances or emergency situations. This includes tenants who are undergoing Holdover Court proceedings, as the landlord is attempting to gain possession of the apartment; as long as these tenants are in compliance with program regulations and their leases, these vouchers will be prioritized.

## **14.2 Required Moves**

### **14.2.1 Owner Non-Compliance**

When either an assisted unit or owner of the unit is not in compliance with federal regulations, HPD will terminate the HAP contract and offer the family the opportunity to move with assistance. To continue receiving subsidy, families must move to an acceptable unit within the voucher term and in accordance with HPD's move policies.

Failure to comply with HPD's move policies is grounds for termination of assistance (see Chapter 15).

### **14.2.2 Unit Under HAP Abatement for 180 Days**

If an assisted unit is under HAP abatement for HQS failures for more than 180 days, HPD will offer the family the opportunity to request a move voucher. Families must search for a new unit during the voucher term and complete a move once a unit has been approved by HPD to continue to receive subsidy.

### **14.2.3 Violation of Space Standards**

If HPD determines that the unit no longer meets HQS because of an increase in family size or composition, HPD will offer the family a move voucher to enable the family to find an acceptable unit within the voucher term. If the family does not find an acceptable unit by the expiration date of the voucher, the family may request additional time to continue their housing search by submitting a request in writing. Additional time to search for an appropriate sized unit will be granted on a case by case basis, and in consideration of factors such as:

- Documented attempts to search for housing; and/or
- Extenuating circumstances that may have prevented the family from finding an acceptable unit.

If an acceptable unit is available for rent by the family, HPD must terminate the original HAP contract, with notification to family and owner. The contract terminates at the end of the month that follows the month in which notification is given.

## **14.3 Portability**

Portability is a term used to describe a family's ability to rent a dwelling unit outside HPD's jurisdiction and continue to receive HCV tenant-based assistance.

### **14.3.1 Porting out of New York City**

A voucher holder or participant family has the right to receive tenant-based voucher assistance to lease a unit outside HPD's jurisdiction, anywhere in the United States, in the jurisdiction of another Public Housing Authority (PHA) with tenant-based assistance. Continued assistance is bound by the payment standards and other policies of the 'receiving' PHA.

Unlike moves, portability can be exercised immediately upon receipt of the voucher and does not require an initial lease up in HPD's jurisdiction.

Requests for portability by existing participants maybe approved as funding allows and if:

- The assisted lease for the old unit has terminated by mutual agreement of the owner and the tenant, or by HPD action of terminating the HAP contract;
- The tenant is not in the process of subsidy termination with HPD and the owner has given the tenant a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the tenant; or
- The tenant has given notice of lease termination (if the tenant has a right to terminate the lease on notice to the owner, for owner breach or otherwise).

HPD may deny permission to port if:

- The family has violated a family obligation;
- The family owes HPD money; or
- The family owes the landlord money.

Per the requirements of the NYC Comptroller's Office, a receiving PHA must submit a substitute W-9 form and proof, from the IRS, of its EIN number in order to have its payments processed.

#### **14.3.2 Porting in to New York City**

HPD will reissue a Housing Choice Voucher to an active HPD Section 8 participant who has temporarily ported out of HPD's jurisdiction but is returning to HPD's jurisdiction. HPD will consider whether the participant is in good standing with the owner and in compliance with the participant's current lease.

## **15 DENIAL OR TERMINATION OF ASSISTANCE**

HPD may deny or terminate assistance for a family because of the family's action or failure to act. HPD will provide families with a written description of the family's obligations under the program, the grounds under which HPD can deny or terminate assistance and HPD's procedures for informal reviews, conferences, and informal hearings.

### **15.1 Forms of Denial/Termination of Assistance**

Denial of assistance for an applicant may include any or all of the following:

- Denying placement on the waiting list;
- Denying or canceling a voucher;
- Refusing to enter into a HAP contract or approve a tenancy; and
- Refusing to process or provide assistance under move and portability procedures.

Termination of assistance for a participant may include any or all of the following:

- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures.

### **15.2 Mandatory Denial of Assistance**

HPD must deny Housing Choice Voucher assistance to an applicant under any of the following circumstances:

- The family does not meet the program eligibility criteria (e.g. preference category, project based voucher building requirement, enhanced conversion residence requirements);
- If any family member has ever been convicted of manufacturing or producing methamphetamine on the premises of federally-assisted housing;
- If any member of a household is subject to a lifetime registration requirement under a State sex offender registration program;
- If any member of the family fails to sign and submit consent forms for obtaining information in accordance with 24 CFR Part 5;
- If no family member can establish either citizenship or eligible immigration status; (i.e., at least one member of the family must establish either citizenship or eligible immigration status.)
- If any family member owes any debt to HPD or another Public Housing Authority;
- If a family member has been evicted from federally assisted housing for drug-related criminal activity. However, HPD may admit the family if HPD determines that the person who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program; or
  - That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned)

### **15.3 Mandatory Termination of Assistance**

HPD must terminate program assistance for a participant under any of the following circumstances:

- If the family is under a HAP contract and 180 days have elapsed since HPD's last housing assistance payment was made because the participant's portion of rent equals the contract rent. These situations are commonly referred to as "zero subsidy" or "no rent hardship" cases. HPD reserves the right to terminate tenants prior to this timeframe, provided tenants are given 30 calendar days' notice of termination;
- If any family member has ever been convicted of manufacturing or producing methamphetamine on the premises of federally assisted housing;
- If the family is evicted from the assisted unit for serious or repeated violation of the lease;
- If any member of the family fails to sign and submit consent forms for obtaining information in accordance with 24 CFR Part 5;
- Any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
- The head of household refuses to enter into, or breaches a Repayment Agreement with HPD;
- Lifetime sex offender registration.

### **15.4 Permissible Grounds for Denial or Termination of Assistance**

HPD may deny Housing Choice Voucher assistance to an applicant or terminate program assistance for a participant under any of the following circumstances:

#### **15.4.1 Permissible Grounds for Denial**

- HPD has previously terminated Housing Choice Voucher assistance for any member of the family;
- If the head of household has previously been terminated from federal housing subsidy program for adverse termination reasons (Criminal Activity – Drugs, Criminal Activity – Sex Offender and Failure to Report Income);
- If any member of the family on the HCV application has been evicted from federally-assisted housing in the last five years;
- An EIV existing tenant search indicates that applicant is receiving subsidy in another housing program;
- The family has breached a repayment agreement with HPD previously.

#### **15.4.2 Permissible Grounds for Denial and/or Termination**

- Any household member or guest engages in illegal use of a drug in the assisted unit;
- Any member of the family commits drug-related criminal activity, or violent criminal activity;
- HPD has reasonable cause to believe that a household member's alcohol or illegal drug use or a pattern of alcohol or illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents;

- The family currently owes rent or other amounts to HPD or another PHA in connection with Housing Choice Voucher or public housing assistance under the Housing Act of 1937;
- The family has breached a repayment agreement with another PHA;
- The family, a guest or apparent agent of the family has engaged in or threatened abusive or violent behavior toward HPD personnel. This includes verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate, may be cause for termination or denial. "Threatening" refers to oral or written threats and physical gestures or use of animals as weapons that communicate an intent to abuse or commit violence;
- The family has misrepresented household members, or any other reported information on or accompanying the Housing Choice Voucher application or annual recertification;
- The family has misrepresented income by more than \$5,000 and has received an overpayment of HAP subsidy of \$10,000 or more;
- HPD determines that the family has misrepresented income by more than \$5,000 annually for a second time;
- The family has violated one of the family obligations listed on the voucher, HPD briefing booklet, and HPD's Administrative Plan;
- The family has failed to provide information requested by HPD or the family has failed to attend their scheduled briefing with HPD;
- The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damage to a unit, or any other amounts owed under the lease;
- A family member has engaged in activity that may threaten the health or safety of the owner, property management staff, or persons performing the contract administration function or responsibility on behalf of HPD, including an HPD employee or contractor or agent;
- The family fails to complete a required move as described on page 14-2;
- The family moves out of the assisted unit without prior written approval to move by HPD.

#### **15.4.3 Denial/Termination Due to Lack of Funding Availability**

During periods when funding availability is limited (projected expenses exceed anticipated funding) or voucher shortage (vouchers issued exceed the established voucher availability by the Annual Contributions Contract), after HUD notification, HPD reserves the right to rescind vouchers issued first and begin termination of subsidy if necessary. In such situations, HPD will decide which households will have their vouchers rescinded or subsidy terminated based on factors including but not limited to:

- Risk of immediate homelessness,
- Household income as it relates to the Area Median Income,
- Value of assets for all household members,
- Level of HAP expense,
- Availability of alternate housing subsidy.

Similar guidelines will apply to Tenant Protection Voucher holders after the one year anniversary of the enhanced development conversion. Participants in special purpose

voucher programs such as HUD VASH will be the last group to be terminated. Should the need arise to terminate subsidy for the population; the guidelines above will be applied.

Households who were terminated will have the opportunity for re-instatement if funding becomes available. Those terminated last will have the first opportunity for re-instatement. Those who have secured alternate housing subsidy may not be re-instated in the program.

## **15.5 Screening and Termination for Drug Abuse and Other Criminal Activity**

All screening and termination of assistance procedures will be administered fairly and in such a way as to not violate rights to privacy or discriminate on the basis of race, color, nationality, religion, familial status, disability, sexual orientation, gender identification or other legally protected groups. Owners are responsible for screening their tenants prior to executing a lease.

### **15.5.1 Screening of Applicants and New Household Members**

HPD will use EIV and other online databases to screen for history of criminal activity. In an effort to prevent future drug related and other criminal activity, as well as other patterns of behavior that pose a threat to the health, safety or right to peaceful enjoyment of the premises by other residents, and as required by federal regulations, HPD will endeavor to screen applicants as appropriately and fairly as possible for drug-related and violent criminal behavior. Such screening will apply to any member of the household who is 18 years of age or older.

### **15.5.2 Drug Related and Violent Criminal Activity**

Persons evicted from federally assisted housing because of drug-related criminal activity are ineligible for admission to the Housing Choice Voucher program for a three-year period beginning on the date of such eviction. However, the household may be admitted if, after considering the individual circumstances of the household, HPD determines that:

- The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program, the documentation of which has been approved by HPD; and
- The circumstances leading to eviction no longer exist because the criminal household member is no longer a member of the family (death, incarceration or other permanent situation).

## **15.6 Notice of Termination of Assistance**

If HPD decides to terminate assistance to the family, HPD must give the family a written notice of intent to terminate, with reasons, as well as notify them of their right to an informal hearing prior to the proposed date of termination.

Terminations will allow a minimum of 30 days' notice, with the following exceptions:

- Death of sole household member. The termination will be effective the end of the month of the date of death, as confirmed by the Social Security Administration or death certificate. HPD will not make housing assistance payments beyond this date.
- The assisted unit is vacated by the family without HPD approval. HPD will send a notice of pre-termination and schedule a Program Integrity Compliance (PIC) unit visit if necessary.
- Head of household relinquishes subsidy.

### **15.7 HPD Discretion**

In deciding whether to deny program admission or terminate assistance because of action or failure to act by members of the family, HPD has discretion to consider all of the circumstances in each case including the seriousness of the case. Such acts include, but are not limited to:

- Failure to occupy a unit as a primary residence after execution of a HAP contract;
- Failure to attend a conference;
- Failure to utilize the voucher within the time allowed;
- Failure to enter into a lease at a Project Based Voucher or Enhanced Development

HPD will use its discretion in reviewing the extent of participation or culpability of individual family members and the length of time since the violation occurred. HPD may also review the family's more recent history and record of compliance and the effects that denial of program admission or termination of assistance may have on other family members who were not involved in the action or failure to act.

HPD may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in, or were culpable for the action or failure to act, will not reside in the unit. HPD may permit the other members of a family to continue in the program.

### **15.8 Lease Violations**

The following criteria will be used to decide if a serious or repeated violation of the lease will result in termination of assistance:

- If the owner terminates tenancy through court action for serious or repeated violation of the lease;
- If the owner notifies the family of termination of tenancy for a serious or repeated lease violation and the family moves from the unit prior to completion of court action; and HPD determines based on available evidence that the cause of the move is a serious or repeated violation of the lease;
- If the family fails to provide access to the unit for the owner or management agent so that HQS deficiencies can be cured as required by HPD;
- If there are police reports, neighborhood complaints or other third party information that has been verified by HPD; and
- Non-payment of rent is considered a serious violation of the lease. A court order of eviction for non-payment is not required for HPD to terminate assistance. If an

owner provides sufficient documentation of non-payment of rent, HPD will consider termination of assistance for the participant.

### **15.9 Termination of Tenancy by Owner**

The owner may only evict the tenant by court action. During the term of the lease (the initial term or any extension thereafter), the owner may only terminate the tenancy because of:

- Serious or repeated violation of the lease;
- Disturbance of neighbors;
- Destruction of property;
- Living or housekeeping habits that cause damage to the unit or premises;
- Violation of federal, state, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;
- Criminal activity or alcohol abuse; or
- Other good cause.

Non-payment of the HAP subsidy by HPD is not grounds for termination of the lease, since the family is not responsible for that portion under the HAP contract.

If the owner intends not to renew a lease or not to accept a renewal HAP contract, the owner must give HPD 60 days' notice prior to the end of the current lease term, in order that HPD can offer the participant a voucher to move. However, under rent stabilization, landlords *must* offer tenants in good standing a renewal lease that includes the material terms of the previous lease. HPD considers the acceptance of Section 8 subsidies to be a material term of the lease; therefore, landlords of rent-stabilized units are obligated to accept Section 8 in their renewal leases. In addition, Local Law 10 of 2008 prohibits landlords from discriminating against tenants based on "lawful sources" of income. Lawful sources of income include social security, any federal, state or local public assistance or housing assistance such as Section 8 vouchers.

### **15.10 Procedures for Non-Citizen Households**

Applicant or participant families in which no members are either U.S. citizens or eligible immigrants are not eligible for assistance and must have their assistance terminated. Assistance may not be terminated while verification of the participant family's eligible immigration status is pending.

When HPD has clear, concrete or substantial documentation that contradicts the declaration of citizenship made by an applicant or participant, an investigation will be conducted and the individual will be given an opportunity for a hearing. If the family or any member claimed eligible immigrant status and the U.S Citizenship and Immigration Services (USCIS) primary and secondary verifications failed to document the status, the family may make an appeal to the USCIS and request a hearing with HPD either after the USCIS appeal or in lieu of the USCIS appeal. After HPD has made a determination of ineligibility, the family will be notified of the determination and the reasons and informed of the option for prorated assistance (if applicable).

### **15.11 Zero Subsidy Tenants (No Rent Hardship)**

The family may remain in the unit at zero assistance (the tenant portion of the rent equals the contract rent) for up to 180 days after the last HAP payment, unless HPD exercises its right to terminate assistance for such families prior to the 180-day timeframe. If the family is still in the unit after 180 days, the assistance will be terminated. If within the 180-day timeframe, or other timeframe designated by HPD per above, an increase in rent or decrease in income causes the family to be eligible for a housing assistance payment, HPD will resume payments for the family.

In order for a family to move with continued assistance to another unit during the 180 days, the rent for the new unit would have to be high enough to necessitate HAP.

### **15.12 Missed Appointments and Deadlines**

It is a family's obligation to supply information, documentation and certification as needed for HPD to fulfill its responsibilities. HPD schedules appointments and sets deadlines in order to obtain the required information. An applicant or participant who fails to keep an appointment or to supply information required by a deadline without notifying the agency may be sent a notice of denial or termination of assistance for failure to provide required information.

Appointments will be scheduled and time requirements will be imposed for the following events and circumstances:

- Eligibility for admission;
- Verification procedures;
- Voucher issuance and briefings;
- HQS inspections;
- Recertifications; and
- Conferences and Appeals.

Acceptable reasons for missing appointments or failing to provide information by deadlines are: medical emergency, family emergency, and any other reason that HPD deems appropriate. These reasons are only acceptable if HPD is notified in a timely manner.

## **16 INFORMAL REVIEWS, CONFERENCES, AND INFORMAL HEARINGS**

HPD offers numerous ways for program applicants and participants to clarify, resolve, review, and appeal matters and decisions concerning their eligibility to receive Section 8 rent subsidies. These include informal reviews, conferences, and informal hearings. Informal reviews concern denials of assistance to applicants (including voucher holders<sup>1</sup>), a conference is used as a preliminary step to resolve matters leading to termination of a participant's subsidy, and an informal hearing is an appeal of termination or subsidy determination for a participant.

HPD will take affirmative steps to communicate with people who need services or information in a language other than English. Interpreters will be available if requested in writing at least three business days before the informal review, conference or informal hearing by the participants. The family has a right to legal counsel or other representation at their own expense.

HPD's policy is that families are given 30 calendar days from the date of the notice of adverse action to request an informal hearing or review. Families may request a conference within 15 calendar days from the date of the notice.

### **16.1 Informal Review for Applicants**

An informal review is an appeal by an applicant and will be administered as outlined in 24 CFR Part 982.554.

HPD will give all applicants prompt notice of a decision denying assistance along with a brief statement of the reason for HPD's decision. Depending on the reason (see below), the applicant may also be given the opportunity to request an informal review of the decision and a time limit for requesting a review. An informal review consists of a review of the application, its supporting material and any additional written material that an applicant wishes to submit to support the claim of eligibility.

#### **16.1.1 When an Opportunity for an Informal Review is Required**

Generally, HPD must provide applicants with the opportunity for an informal review of decisions denying:

- Listing on HPD's waiting list;
- Issuance of a voucher;
- Participation in the program; and
- Assistance under portability procedures.

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<sup>1</sup> A voucher holder is considered an applicant, and not a participant.

Generally, informal reviews are not required for the following reasons for denial of assistance:

- Discretionary administrative determinations by HPD;
- General policy issues or class grievances;
- A determination of the family unit size under HPD's subsidy standards;
- HPD's determination not to approve an extension or suspension of a voucher term;
- Disapproval of the owner's lease form;
- An HPD determination not to grant approval of the tenancy;
- An HPD determination that a unit selected by the applicant is not in compliance with HQS; and
- An HPD determination that the unit is not in compliance with HQS because of the family size or composition.

When an applicant is denied assistance because the household income is above the applicable income limits, the period determining income eligibility ends on the date the denial notice is printed. Therefore, applicants must prove that they were income eligible at the time the denial notice was issued. Subsequent decreases in income will not be considered.

When an applicant is denied assistance for citizenship or eligible immigration status, the applicant is entitled to the same informal hearing that is offered to participants, as discussed in 16.3 of this chapter.

### **16.1.2 Time Limits**

All requests for informal reviews must be made in writing and received by HPD, either by mail or in person, within 30 calendar days from the date printed on the notice. Requests may be mailed or hand delivered to HPD's Section 8 Appeals Unit. HPD will not accept phone call requests for an informal review. If the applicant does not request an informal review in accordance with these procedures, HPD's determination will become final.

HPD will attempt to schedule all informal reviews within 14 calendar days of receipt of the request. Requests to reschedule an informal review will only be considered for documented emergency situations.

### **16.1.3 Informal Review Procedures**

The Hearing Officer will conduct the informal review. The Hearing Officer will be an HPD employee other than the person who made or approved the determination under review or a subordinate of that person.

The family or its representative may request pre-informal review discovery of HPD documents including records and regulations relevant to the informal review. The family may make copies of any such documents at their own expense.

Before any informal review, HPD must be provided the opportunity to examine any family documents that are directly relevant to the informal review at its office. HPD must be allowed to copy any such document at its own expense. If the family does not make a document available for examination on request of HPD, the family may not rely on the document at the informal review.

The applicant will be given the option of presenting oral and/or written objections to the determination in question. The family has a right to legal counsel or other representation at their own expense. Both HPD and the family will have the opportunity to present evidence and/or witnesses.

HPD will notify the applicant of the final decision in writing. The notification will include a brief statement of the reasons for the decision.

#### **16.1.4 Issuance of Decision**

The Hearing Officer will make a determination on whether the rule or regulation was correctly or incorrectly applied according to the information submitted at the informal review. A notice of the informal review findings will be provided in writing to HPD and the applicant within a reasonable period of time and will include a brief explanation of the reasons for the final decision.

All information concerning the informal review will be retained in the family's file.

#### **16.1.5 Effect of Final Review Decision**

HPD is not bound by informal review decisions which:

- Concern matters in which HPD is not required to provide an opportunity for an informal review in accordance with 24 CFR Part 982.554;
- Contradict HUD regulations or requirements;
- Contradict federal, state or local laws; or
- Exceed the authority of the person conducting the informal review.

#### **16.1.6 Substitute Hearing Officer**

When a Hearing Officer is unable to render a written decision after presiding over an informal review because of death, disability, or extended leave, or is unable to carry out

his or her duties or because that Hearing Officer leaves HPD's employ, HPD will assign a substitute Hearing Officer to review the record. The record shall include all testimony and evidence submitted at the informal review and either the audio recording or a written transcript of the informal review when available. The assigned substitute Hearing Officer will render a written decision based upon his or her review of the record and pursuant to the procedure prescribed in this Administrative Plan and HUD regulations and provide an explanation for the decision to HPD and the participant or applicant in writing.

### **16.1.7 Preference Denial**

Although not required by regulation, when HPD denies admission to an applicant because the applicant does not belong to a preference category, the family will be notified in writing of the specific reason for the denial and offered the opportunity to request an informal review from the Section 8 Appeals Unit.

## **16.2 Conference for Participants**

The conference is an opportunity for program participants to meet with HPD staff to resolve any outstanding matters that prevent HPD from determining whether the participant is still eligible to receive a Section 8 rent subsidy. Participants who do not submit all required information for recertification will be sent a "Pre-Termination Notice of Section 8 Non-Compliance," along with a "Request for Conference" form. Participants will be given 15 calendar days from the date of the notice to request a conference. Requests may be mailed or hand delivered to HPD, Division of Tenant Resources.

HPD has voluntarily implemented the conference procedure. HPD is not required to offer a conference and reserves the right to discontinue the use of conferences at any time.

### **16.2.1 When an Opportunity for a Conference is Granted**

In most cases, HPD will offer participants who have not submitted all documents needed to recertify their Section 8 rent subsidy, whose information differs from information obtained from third party sources or who wish to dispute the tenant share of rent determined by HPD an opportunity to participate in a conference. A conference request will not be offered or granted for cases involving drug-related or other criminal activity. Such cases will automatically result in a termination.

If a conference is scheduled, but the participant fails to attend, or the conference is held, but the required documentation is not submitted or other procedures are not met, HPD will send a "Notice of Subsidy Termination" to the participant.

If the participant provides the required documentation within the allowable time period, and the documentation satisfactorily demonstrates program compliance, HPD will send a "rent breakdown letter" to the participant and assistance will continue. If the requested

documentation is submitted but it does not meet program compliance requirements, subsidy will be terminated.

The “Notice of Subsidy Termination” and the “rent breakdown letter” constitute notification of the conference determination.

### **16.2.2 Time Limits for Conferences**

All requests for conferences must be made in writing and received by HPD within 15 calendar days from the date printed on the “Pre-Termination Notice of Section 8 Non-Compliance.” If a family does not request a conference, the family may still request an informal hearing, if applicable. HPD will attempt to schedule all conferences within 14 calendar days of receipt of the request. All conferences will be conducted within a reasonable period of time (typically 30 days) of receipt of the request. Requests to reschedule a conference will only be entertained for documented emergency situations.

### **16.2.3 Conference Procedures**

A team leader and/or coordinator, or higher level program staff will conduct the conference and may regulate the conduct of the conference.

The participant or representative will be given the opportunity to present documents that demonstrate compliance with Section 8 requirements. In addition, when agreed to at the conference, participants will be permitted to submit required documentation up to seven calendar days after the conference.

At the conclusion of the conference, participants will be required to sign a “Statement of Understanding – Section 8 Participant Obligations” detailing the documents submitted and the documents still required to be submitted, if any. All documents submitted during a conference will be reviewed for completeness and accuracy after the conference.

## **16.3 Informal Hearing for Participants**

An informal hearing is an appeal by a participant and will be administered as outlined in 24 CFR Part 982.555. Participants in the voucher program must be notified of the right to an informal hearing under certain circumstances concerning their participation in the program.

### **16.3.1 When an Opportunity for an Informal Hearing is Required**

HPD will provide an opportunity for an informal hearing for the following decisions:

- A determination of the family’s annual or adjusted income and the use of such income to compute the housing assistance payment;

- A determination of the appropriate utility allowance (if any) for tenant-paid utilities;
- A determination of the voucher size under HPD's subsidy standards;
- A determination that a voucher program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under HPD's subsidy standards (i.e., the family is "over-housed"), or HPD's determination to deny the family's request for an exception from the standards;
- A determination to terminate assistance for a participant family because of the family's action or failure to act; and
- A determination to terminate assistance because the family has been absent from the assisted unit for longer than the maximum period permitted under HPD's policy and HUD rules.

Informal hearings regarding termination of assistance will be conducted prior to terminating assistance if such informal hearing was properly requested within 30 days from the date printed on the notice.

### **16.3.2 When an Opportunity for an Informal Hearing is Not Required**

HPD is not required to provide an opportunity for an informal hearing in any of the following circumstances:

- Discretionary administrative decisions by HPD;
- General policy issues or class grievances;
- Establishment of the schedule of utility allowances for families in the program;
- HPD's determination not to approve an extension or suspension of a voucher term;
- HPD's determination not to approve a unit or tenancy;
- HPD's determination that a unit is not in compliance with HQS. However, HPD must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family;
- HPD's determination that the unit is not in accordance with HQS because of the family size; and
- HPD's determination to exercise or not to exercise any right or remedy against the owner under a HAP contract.

### **16.3.3 Notification of Determination**

For determinations of the family income, utility allowance, or unit size, HPD will notify the family that they may ask for an explanation of the basis of the determination, and, if the family does not agree with the determination, they may also request an informal hearing to contest the determination.

For determinations that a family is residing in a unit with a larger number of bedrooms than is appropriate for the family size, HPD's denial of a family's request for an exception from the subsidy standards, or HPD's termination due to a family's action, failure to act, or absence from the unit for longer than the maximum period permitted, HPD will promptly notify the family in writing. The notification will include the following information:

- The proposed action or decision of HPD and its effective date;
- The procedures for requesting an informal hearing if the family does not agree with the decision;
- The time limit for requesting the informal hearing; and
- To whom the informal hearing request should be addressed.

#### **16.3.4 Time Limits**

All requests for informal hearings must be made in writing and received by HPD, either by mail or in person, within 30 calendar days from the date printed on the notice. HPD will not accept phone call requests for an informal hearing. If the participant does not request an informal hearing in accordance with these procedures, HPD's determination will become final.

HPD will attempt to schedule all informal hearings within 14 calendar days of receipt of the request. Requests to reschedule an informal hearing will only be considered for documented emergency situations.

#### **16.3.5 Informal Hearing Procedures**

The Hearing Officer will conduct the informal hearing. The Hearing Officer will be an HPD employee other than the person who made or approved the determination under review or a subordinate of that person.

The family or its representative may request pre-informal hearing discovery of HPD documents including records and regulations relevant to the informal hearing. The family may make copies of any such documents at their own expense.

Before any informal hearing, HPD must be provided the opportunity to examine any family documents that are directly relevant to the informal hearing at its office. HPD must be allowed to copy any such document at its own expense. If the family does not make a document available for examination on request of HPD, the family may not rely on the document at the informal hearing.

The participant will be given the option of presenting oral and/or written objections to the determination in question. The family has a right to legal counsel or other representation at their own expense. Both HPD and the family will have the opportunity to present evidence and/or witnesses.

### **16.3.6 Conduct at Hearings**

The hearing officer is responsible for managing the order of business and ensuring that hearings are conducted in a professional manner. Attendees are expected to comply with all hearing procedures and to observe guidelines for conduct established by the hearing officer. If a person demonstrates disruptive, abusive, or otherwise inappropriate behavior during a hearing, this person will be excused from the hearing at the discretion of the hearing officer and the hearing will end.

### **16.3.7 Issuance of Decision**

The Hearing Officer will make a determination on whether the rule or regulation was correctly or incorrectly applied according to the information submitted at the informal hearing. A notice of the informal hearing findings will be provided in writing to HPD and the participant within a reasonable period of time and will include a brief explanation of the reasons for the final decision.

All information concerning the informal hearing will be retained in the family's file.

### **16.3.8 Substitute Hearing Officer**

When a Hearing Officer is unable to render a written decision after presiding over an informal hearing because of death, disability, or extended leave, or is unable to carry out his or her duties or because that Hearing Officer leaves HPD's employ, HPD will assign a substitute Hearing Officer to review the record. The record will include all testimony and evidence submitted at the hearing and either the audio recording or a written transcript of the hearing when available. The assigned substitute Hearing Officer will render a written decision based upon his or her review of the record and pursuant to the procedure prescribed in this Administrative Plan and HUD regulations and provide an explanation for the decision to HPD and the participant or applicant in writing.

### **16.3.9 Effect of Informal Hearing Decision**

HPD is not bound by informal hearing decisions which:

- Concern matters in which HPD is not required to provide an opportunity for an informal hearing in accordance with 24 CFR Part 982.555(b);
- Contradict HUD regulations or requirements;
- Contradict federal, state or local laws; or
- Exceed the authority of the person conducting the informal hearing.

## **17 PROGRAM INTEGRITY**

### **17.1 Preventing, Detecting, and Investigating Errors and Program Abuse**

If HPD makes a determination that a family, owner or HPD employee has abused the program, HPD will take action to correct the situation. HPD may at any time deny program assistance to an applicant or terminate program assistance for a participant if a preponderance of the evidence shows that any family member has willfully and intentionally committed fraud, bribery, or any other corrupt or criminal act in connection with a federal housing program. HPD's actions will vary based on the nature and severity of the abuse.

Fraud and abuse can consist of either a single act or a pattern of actions made with the intent to deceive or mislead, and which constitutes a false statement, omission, or concealment of a substantive fact. Fraud and abuse result in the payment of program funds in violation of program requirements.

In determining whether a case of fraud or abuse exists, HPD must recognize the differences between unintentional and intentional misreporting. HPD must also evaluate the special circumstances and seriousness of a case to determine whether further investigation for evidence of fraud or abuse is required. For example, failure to report required information due to a lack of understanding may be considered an error or omission and not fraud or abuse. For owners, collecting a HAP payment for a vacated unit when the owner is not aware that the assisted family has vacated may also be considered an error or omission and not fraud.

Fraud allegations are received or discovered from many different sources. When information indicates that fraud may exist, the family and/or owner and/or HPD employee may be required to attend a conference to review the issue. HPD may work with the Inspector General's office at the Department of Investigation (DOI) to further investigate, either before or after a conference takes place. Referral to DOI does not prohibit HPD from making a decision to deny assistance to an applicant or terminate program assistance for a participant or owner.

### **17.2 Corrective Measures and Penalties**

If an error has been made in determining family income, family share of the rent or family composition, HPD will promptly correct the error after notice to the family and the owner. For subsidy corrections, the notice will include an amendment to the HAP contract. For changes in family size, the correction may require the family to move to a new unit. Unless the owner requires a new lease, execution of a new HAP contract is not required. The specific corrective action that HPD takes depends upon the fault of the party in causing the error as more fully described below.

#### **17.2.1 Family Payment Too High**

- **Error or omission - fault of HPD:** HPD will refund the total amount due to the family from the Housing Choice Voucher administrative fee reserves. If the family

owed the owner rent, HPD may choose to pay the amount due or a portion thereof directly to the owner on behalf of the family.

- **Error or omission - fault of the family:** If the error is the fault of the family, HPD will not reimburse the family, but will process the change effective the first of the month following notification or discovery of the error or omission.

### 17.2.2 Family Payment Too Low

- **Error or omission - fault of HPD:** If the family share of rent is incorrectly set too low, the family and the owner are not responsible for repayment. HPD in this instance will give the family and owner notice of the change in family and HAP share to be effective immediately.
- **Error or omission - fault of the family:** If the family share of rent is set too low due to error or omission of the family, HPD may exercise its discretion to terminate assistance for that family, or to enter into a repayment agreement with the family. If HPD selects the latter option, HPD will notify both the owner and tenant of the tenant share and HAP share to be effective retroactively to the time of the reporting error. Failure of the family to abide by the terms of the repayment agreement may result in termination of assistance.

### 17.2.3 Family Size

- **HPD error - family receives a subsidy for a larger unit than the size of unit for which it is entitled:** HPD will encourage the family to move to an appropriately sized unit. If the family refuses to relocate or make a good faith effort to find alternative housing, HPD will adjust the payment standard for the family to the appropriately sized unit for which it qualifies. HPD will give proper notice to both the family and the owner of any change in subsidy, which will take effect at the next regular reexamination.
- **Misrepresentation by the family- family receives a subsidy for a larger unit than the size of unit for which it is entitled:** HPD may terminate assistance, or, at its discretion, require the family to repay HPD for the total amount of overpayment due under the terms of a repayment agreement. If assistance is not terminated, HPD will adjust the subsidy to account for the new payment standard and provide the owner and the family with notification of the change.
- **Family receives a subsidy for a unit that is smaller than the size of unit for which it is entitled:** HPD will immediately notify the family and the owner of the error and issue the family a voucher for the correct unit size. If the current unit violates HQS space requirements and the family does not relocate within a reasonable period of time, HPD will terminate assistance.

## 17.3 Repayment Agreements

At HPD's discretion, repayment agreements may be executed with participants who owe HPD money as a result of current participation in the Housing Choice Voucher program.

For example, if a family did not report an increase in family income, or is found, through third party verification to have a higher income than that reported by the family, HPD may calculate a retroactive payment for the full amount. However, HPD is not obligated to enter into a repayment agreement with any tenant and may terminate program assistance for a family's violation of their program obligations. Any second or repeated instance of a failure to report assets or income will result in termination of subsidy. HPD will not offer a repayment agreement following a case of repeated misrepresentation of assets. HPD may also refer the case to the Inspector General's Office of the Department of Investigation (DOI).

If the tenant does not comply with a repayment agreement or fails to enter into a repayment agreement, HPD must terminate the tenant from the program. If HPD determines that the family committed fraud or was grossly irresponsible, HPD may terminate assistance or require the family to repay the entire amount in full without a repayment agreement. In these instances, HPD may refer the case for criminal prosecution through the Inspector General's Office at the (DOI).

Families will not be permitted to move to a new unit (unless overcrowding or landlord-caused HQS violations require it) if they are in default of the terms of a repayment agreement, or fail to enter into a repayment agreement. HPD may also deny moves outside HPD's jurisdiction (ports) if the family is in default of or fails to enter into a repayment agreement.

HPD reserves the right to set payment conditions, including down payment amount, length of agreement, and monthly minimum payments.

## 18 PROGRAM ADMINISTRATION

### 18.1 Administrative Fee Reserve

The Commissioner of HPD or any employee designated by the Commissioner may approve charges to the administrative fee reserve for either a House Choice Voucher program or other housing purpose. The agency does not maintain a maximum withdrawal amount from the reserve per occurrence or per fiscal year.

### 18.2 Housing Choice Voucher Notices

The Housing Choice Voucher program deems all notices that are mailed through the U.S. Postal Service to have been received five calendar days after mailing, unless the Postal Service returns the notice as undeliverable. HPD may also send some notices by certified mail.

### 18.3 Coordination with the New York City Housing Authority (NYCHA)

HPD and NYCHA both administer voucher programs in the same jurisdiction. Wherever possible, the two agencies collaborate on program operations and attempt to maintain consistent policies for owners that have HAP contracts with both agencies. The items listed below are presented for informational purposes only. Both agencies maintain separate funding contracts with HUD and are not obligated to maintain the same discretionary policies and procedures for the operation of the Housing Choice Voucher program.

- **Fair Market Rents (FMRs):** HUD establishes one set of FMRs for the New York City metropolitan area that is used by both agencies.
- **Payment Standards:** HPD and NYCHA may establish different payment standards based on the FMR. Currently, HPD's payment standard is 105% of FMR, but this figure is subject to change. HPD collaborates with NYCHA in providing any requests for exception payment standards to HUD.
- **Income Limits:** HUD issues one set of income limits for the New York metropolitan statistical area that is used by both agencies to determine income eligibility for the HCV program.
- **Income Targeting:** In accordance with the Quality Housing and Work Responsibility Act of 1998, each fiscal year NYC will reserve a minimum of 75% of its new admissions under the HCV program for families whose income does not exceed 30% of the area median income or the Federal poverty level. HUD refers to these families as "extremely low-income families." HUD will treat multiple PHAs serving one jurisdiction as a single PHA for income targeting purposes.
- **HQS Policies and Guidelines:** HPD and NYCHA collaborate on HQS inspection guidelines and requirements through periodic review but HPD maintains separate guidelines.
- **Utility Allowances:** HPD uses the analysis of NYCHA's Energy Department to inform its utility allowance schedule as provided by HUD regulation.

### **18.3.1 HPD Employee Conflict of Interest**

#### **18.3.1.1 Solicitation or Acceptance of Gifts**

In accordance with Chapter 68 of New York City's Conflict of Interest Law and the Commissioner's Memorandum regarding Conflicts of Interest:

HPD employees shall not solicit or accept anything of value from any person or entity doing business with HPD, except that employees may accept:

- Gifts that are customary on family and social occasions (such as a birthday or wedding), as long as the basis for the gift is close personal friendship and the entire circumstances indicate that there is no actual conflict or appearance of impropriety; and
- Invitations, meals, or travel expenses offered in connection with certain events, conferences, and meetings involving City business that may be considered gifts to the City and not to the individual employee.

HPD employees shall not solicit or collect any monetary or non-monetary donation or anything else of value (including, but not limited to, any campaign contribution or any donation of time or resources) on behalf of any person, entity, organization, candidate, or cause from any person or entity doing business with HPD.

Violation of the City's conflict of interest rules may result in demotion, suspension, or termination of employment. In addition, the Conflict of Interest Board may levy fines up to \$10,000 for each violation and recommend disciplinary action. Conflict of interest violations are punishable as misdemeanors under City law and can result in prosecution by the District Attorney's Office.

### **18.3.2 For Employees Applying for or Receiving housing subsidy administered by DTR**

DTR employees who are applicants or participants in any housing subsidy program administered by DTR must immediately report this to their unit Director. Employees who own an assisted unit or who have family members that receive a DTR administered housing subsidy must also report this to their unit Director. The following policy and protocol will apply for HPD employees or contract workers that have applied for or are receiving assistance housing subsidy administered by DTR, or are participating landlords including:

- DTR employees or contract workers who are tenants, relatives of tenants or participating landlords in a DTR administered housing subsidy program may not work on or access either electronic or paper records their own cases or cases involving immediate family members. Immediate family members include a parent, stepparent, child, stepchild, grandparent, grandchild, sibling, or stepsibling. HPD may at its discretion expand this prohibition of case involvement to include close friends and additional family members as needed. This means that DTR employees or contract workers who apply for a DTR administered subsidy may not process their own application, schedule their own briefing, be directly involved in issuing their own voucher, or

participate in any other aspect of their case. Employees and contract workers who already receive HPD assistance may not administer, access, or process their own recertification. Employees and contract workers working in the HQS unit or in the Code Enforcement unit may not perform any inspection for an apartment that they will rent, currently rent, or in which they have ownership interest.

- All applications for a DTR administered subsidy and recertifications for existing employees or contract workers will be reviewed and approved by a Quality Assurance Unit Supervisor or employee at a higher level before assistance is awarded or the recertification is completed.
- The cases of employees and contract workers receiving HPD HCV assistance, participating as landlords, and the files of family members of DTR staff will be administered by a unit focused on quality assurance to determine if there are any irregularities that affect the employee's or contract workers' program status.

## **19 ENHANCED VOUCHERS**

HPD uses enhanced vouchers to preserve housing units that might otherwise be lost due to housing conversion actions such as mortgage prepayments, project-based opt-outs, HUD enforcement actions, and HUD property disposition. Enhanced vouchers are also known as “sticky” vouchers because the enhanced assistance only applies if the voucher holder stays in the conversion project. If the family moves outside the development, the voucher reverts to a regular voucher and the regular program rules and payment standards apply.

Some aspects of the enhanced voucher program are highlighted below. All other conditions are governed by the regular HCV program rules and regulations.

### **19.1 Selection**

In a housing conversion action, HUD provides vouchers to assist those families affected by a housing conversion, decoupling.

### **19.2 Eligibility**

Only families residing in the project at the time of conversion are eligible for enhanced voucher assistance. In order to receive assistance in HPD’s enhanced voucher program, family annual income cannot exceed 95% of area median income (AMI) as determined by HUD for federal mortgage prepayment, refinancing or insurance termination, or 80% of AMI for project-based contract opt-outs. The family must be income eligible at the time of conversion. For eligibility purposes, time of conversion or decoupling is the effective date of prepayment or voluntary termination of mortgage or refinancing insurance.

If a resident family’s income is greater than 95% of AMI at the time of conversion, the family is not eligible for an enhanced voucher even if the family’s situation later changes.

Generally speaking, a family residing in a unit at the time of conversion has one year from the date of the conversion to apply for a Housing Choice Voucher. However, HPD reserves the right to set deadlines either prior to or beyond the one-year anniversary date in consideration of funding issues. For example, if HPD can reasonably predict that either insufficient funding or unit month allocation exists for a given funding year, HPD may deny applicants before the one-year deadline. Conversely, if HPD can reasonably predict that it will not meet its utilization goals by the end of the funding year, HPD may extend the deadline beyond the year. In all cases, it is the responsibility of the applicant to prove that he or she was income-eligible and residing at the development at the time of conversion.

#### **19.2.1 Vouchers**

Voucher bedroom sizes are based on HPD’s subsidy standards, regardless of the actual occupied unit. Changes in family composition and succession of family members in enhanced conversion projects will be governed by the same rules that apply to the regular housing choice voucher program.

### **19.2.2 Mobility**

Since enhanced vouchers are tenant-based assistance, voucher holders may move as soon as they receive a voucher. Families may move to another unit in the project, outside the project, or outside HPD's jurisdiction under portability. If a family moves from the conversion project, the regular payment standard for the jurisdiction applies to the voucher.

### **19.2.3 Lease Up**

HPD may not approve any temporary or short-term leases between the family and the owner. The initial lease term must be for at least one year unless HPD has determined for the housing choice voucher program that a shorter term would improve housing opportunities for the tenant and such shorter term is the prevailing local market practice.

### **19.2.4 Payment Standard**

For eligible families that remain in the conversion project, the enhanced voucher payment standard equals the approved gross rent of the occupied unit (subject to rent reasonableness determinations). The gross rent is equal to the rent the tenant pays to the owner plus any tenant-paid utility allowance where tenants are responsible for payment of utilities. The regular HPD payment standard does not apply.

## **19.3 Housing Assistance Payment (HAP)**

The HAP contract may not begin before the effective date of the rent increase (60 days after the conversion date).

If a family is income eligible at the time of conversion but is in a zero subsidy situation because the total tenant payment is greater than or equal to gross rent, then HPD must keep a record of family eligibility and inform the family that should their income decrease or the family's rent increase within three years of the conversion date, it is the family's responsibility to contact HPD. At such time, HPD may execute a HAP contract as long as all other program requirements are met.

### **19.3.1 Tenant Share—Enhanced Minimum Housing Payments**

Families with enhanced assistance remaining in the conversion project must pay *the greater of 30% of their income or the amount they were paying toward housing payments (rent plus utilities, if applicable) at the time of conversion, even if it exceeds 40% of the family's adjusted monthly income.* Families previously receiving project-based or tenant-based assistance or other subsidies must pay at least their tenant share of rent at time of conversion. The enhanced minimum rent only applies if the family remains in the conversion project. If a family becomes responsible for paying for

their own utilities *after* the conversion date, the HPD utility allowance in effect at the time the family assumed responsibility for utility payments will be counted toward their minimum payment, such that their monthly housing payment (rent plus tenant-paid utilities) is still the greater of 30% of their income or the amount they were paying prior to conversion.

The method for calculating the minimum rent changes if the family's income subsequently decreases to a significant extent (15% or more) from the family's gross income on the effective date of the eligibility event. In this instance, the family share will be recalculated so the family pays 30% of monthly adjusted income or the percentage of monthly adjusted income actually paid at the time of conversion, whichever is greater. This percentage of income will remain as the family's enhanced voucher minimum rent regardless of subsequent changes in income.

#### **19.4 Right to Remain**

According to federal law, "a family that receives an enhanced voucher has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for housing choice voucher assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for a serious or repeated lease violation or other good cause. If an owner refuses to honor the family's right to remain, the family may exercise any judicial remedy that is available under State and/or local law."

#### **19.5 Overhoused Families**

A family is "overhoused" if the size of the actual unit occupied exceeds the bedroom size listed on the family's voucher. Overhoused families (at the time of conversion or at any time afterwards) must move to an appropriate size unit in the conversion project if one is available. If no appropriate size unit is available in the project, HPD may execute a HAP contract for the oversized unit. The payment standard will be the gross rent of the oversized unit, and HPD will advise the family that the enhanced subsidy based on the oversized unit's rent will be paid up until an appropriate size unit becomes available in the building.

If the family finds an appropriate size unit in the project, the payment standard will equal the gross rent of the new, appropriate size unit. However, if an overhoused family refuses an appropriate size unit that is offered them within the development, HPD will calculate the family's housing assistance payment for the oversized unit based on the applicable payment standards. The participant will be responsible for any amount of the gross rent not covered by the housing assistance payment. Owners of Enhanced Developments are required to report vacancies as they occur. Available vacant units must first be offered to households that are currently overhoused. On a quarterly basis, HPD will request updated rent rolls from owners. Failure to submit timely rent rolls will deem the owner non-compliant with program requirements.

In the case of a single household participant living in an oversized unit, s/he may not refuse a studio apartment that becomes available in the development. If an overhoused single household participant refuses an available studio unit within the development,

HPD will proceed to calculate payment for the oversized unit based on the applicable studio payment standard. The participant will be responsible for any amount of the gross rent not covered by the housing assistance payment.

Exceptions to the rules on overhoused families may be granted on the basis of health or disability. The standards for appropriate documentation will be the same as indicated in related sections in the Administrative Plan, unless determined otherwise by the Assistant Commissioner. Any exception must be approved by an HPD employee at the Director level or higher.

## **19.6 Rent Increases**

Rent increases are governed by the terms of the lease and any applicable state or local laws. In addition, the owner is not permitted to increase the rent for at least 60 days from the conversion date. If the rent is increased for an enhanced voucher family, HPD will increase the payment standard to equal the new gross rent (see Chapter 9: Rent Reasonableness Determinations).

## **20 HOUSING CHOICE VOUCHER HOMEOWNERSHIP**

HPD has established a Housing Choice Voucher Homeownership Option for eligible and qualified HPD voucher holders, pursuant to the HUD Final Rule dated August 24, 2000.

### **20.1 Qualifications for Participation**

#### **20.1.1 Current Voucher Holder**

In order to participate in the homeownership option the applicant must be a current Housing Choice Voucher program participant, a Family Self Sufficiency (FSS) program participant, in full compliance with their lease and program requirements, and must not owe HPD any funds under a repayment agreement.

#### **20.1.2 Income**

The income of the adult family member(s) who will own the home at commencement of homeownership assistance must be, at a minimum, equivalent to 2000 hours of annual full time work at federal minimum wage. Public assistance income may not be used for meeting this minimum requirement, *except for households in which the head or spouse is elderly or disabled.*

Once a family identifies a home to purchase, HPD or its designee reserves the right to determine whether family income and assets are adequate to sustain homeownership and other family expenses. Determinations are based on conventional underwriting standards, maintenance and operating expenses consistent with area-wide standards and condition of the property.

#### **20.1.3 Assets**

In order to build assets adequate to acquire and maintain a home, the HCV recipient or another adult household member must be a participant in or graduate of the HPD Family Self Sufficiency program. Participants may also be required to enroll in a First Home Club and/or Home Buyers Club. The minimum homeowner down payment is three percent of the purchase price, and at least one percent of the purchase price must come from the family's personal resources, which may include escrow funds.

#### **20.1.4 Employment**

One or more adult members of the household who will own the home at commencement of homeownership assistance must be employed full time (30 hours or more weekly) continuously during the year prior to commencement of homeownership assistance. HPD has discretion concerning breaks in employment. Households with a disabled

member may receive an exemption as a reasonable accommodation upon request. Households in which the head of household or spouse is disabled or elderly are exempt from this requirement.

### **20.1.5 Previous Defaults**

The household members who will have an ownership interest in the house must not have defaulted on a mortgage to purchase a home under the homeownership option of any PHA.

### **20.1.6 First Time Homeowners**

The applicant must be a first time homeowner, meaning no family member may have held title to a principal residence in the previous three years. A single parent or displaced homemaker who, while married, owned a home with a spouse or resided in a home owned by a spouse is considered a first time homeowner for these purposes.

## **20.2 Process**

### **20.2.1 Homeownership Participation Agreement**

Applicants who meet the minimum program requirements will be required to sign a Homeownership Participation Agreement prior to referral to an HPD approved homeownership counseling agency. This agreement will describe what HPD will require for participation in the Housing Choice Voucher Homeownership Program.

### **20.2.2 Pre-Purchase Counseling**

Once the applicant meets the minimum program requirements described above, s/he will be referred to an HPD approved homeownership counseling agency for pre-purchase counseling. Pre-purchase counseling topics will include home maintenance, budgeting and money management, credit counseling, financing options, and how to locate and negotiate the purchase of a house. Upon successful completion of the pre-purchase counseling, the applicant will receive a "Certificate of Completion," which deems the family to be mortgage-ready.

### **20.2.3 Down Payment Lump Sum Option**

Per the down payment lump sum option that took effect in the November 2002 Final Rule on Down Payment Assistance and Streamlining Amendments, HPD may offer a down payment lump sum option in lieu of continued monthly payments.

#### **20.2.4 Timeframe for Utilization/Home Purchase**

After receipt of a Certificate of Completion, the family will be issued a Homeownership Option Voucher and will have 180 days from the voucher date to find a home and enter into a Contract of Sale. If, after demonstrating to HPD or its designee a good-faith search effort, the family is unable to enter into a Contract of Sale before the end of the 180-day deadline, it may be granted up to two 90-day extensions. A good faith effort includes compliance with the Homeownership Participation Agreement, including but not limited to actively searching for housing, providing all household and financial documents requested to HPD or its designee, and actively participating in savings, Homebuyers Club, and FSS programs. If the family is unable to locate a suitable home, HPD will allow it to continue to receive assistance under the HCV rental program so long as all eligibility criteria continue to be met.

#### **20.2.5 Home Inspections and Contract of Sale**

Eligible housing types include those types permitted by HUD under 24 CFR Parts 5, 903, and 982, which at this time include single-family homes, cooperative units, and condominium units. When the family has identified a home it wants to buy, HPD will conduct a Housing Quality Standards inspection. If HPD finds the safety and condition of the home/unit acceptable, the family must obtain an independent professional home inspection. The inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical and heating systems. A copy of the inspection report must be submitted for review to HPD and any HPD designee assisting the homebuyer. HPD reserves the right to disqualify the home for inclusion in the HCV homeownership program based on either report.

If HPD and/or its designee are satisfied with the results of the inspections, the family may enter into a contract of sale with the owner of the home to be purchased. The home must be either under construction or already existing before the contract of sale is executed. The contract of sale must include the home's price and terms of sale. The family must give a copy of the contract of sale to HPD within three days of execution.

#### **20.2.6 Permitted Ownership Arrangements**

The Homeownership Option may be utilized in two types of housing:

- A single-family house or condominium unit owned by the family in which one or more adult family members hold title to the home. Homes occupied under a lease-purchase agreement are eligible; and
- A cooperative unit in which one or more adult members of the family own shares in the cooperative.

### **20.3 Portability**

Families determined eligible for the HCV Homeownership Option may exercise the option outside of New York City if the receiving PHA is administering a Housing Choice Voucher Homeownership Option and is accepting new families into its program.

### **20.4 Financing**

The family is required to secure a fixed-rate, fully amortizing mortgage or mortgages for an amount(s) that will be supported by its total monthly gross income and the value of HAP payments. The mortgage(s) must be on terms permitted by HUD. An HPD-approved lender from either a conventional bank or a nonprofit lending institution must provide the mortgage loan(s). HPD must also review and approve the terms of the mortgage(s).

Depending upon the availability of funding and to the extent permitted by law, HPD may make available additional subsidy funds such as HOME or CDBG funds to further reduce the cost of homeownership. If at any time during the term of the mortgage(s) the HCV subsidy is reduced (for example, due to an increase in the family's income), the family will still be responsible for making full monthly mortgage payments.

### **20.5 Length and Continuation of Assistance**

Housing Choice Voucher assistance will only be provided for the months the eligible family is in residence in the home. According to federal legislation, the maximum period a family may receive homeownership assistance is 15 years, if the primary mortgage has a term of at least 20 years; or 10 years, if the primary mortgage has a term of less than 20 years; *unless the family is "elderly or disabled."*

A homeownership family may sell one home and purchase another home with Housing Choice Voucher assistance provided there is no mortgage loan default and the family is in compliance with the Statement of Homeowner Obligations (see section below, Homeownership Obligations). As per the legislation, the family is subject to a recapture provision that diminishes over the years of assistance.

The maximum term for homeownership assistance does not apply to an elderly family or a disabled family. In the case of an elderly family, this exception is only applied if the family qualifies as an elderly family at the commencement of homeownership assistance. In the case of a disabled family, this exception applies if at any time during receipt of the homeownership assistance the family qualifies as a disabled family. If during the course of homeownership assistance the family ceases to qualify as disabled or elderly, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least six months of homeownership assistance after the maximum term becomes applicable (providing the family is otherwise eligible to receive Housing Choice Voucher homeownership assistance).

For income and asset calculation purposes, a home purchased with a housing choice voucher will not be counted as an asset for the first 10 years of the homeownership voucher assisted ownership.

## **20.6 Defaults**

If a family in the Homeownership Option defaults on its first or second home mortgage loan, the family will not be able to use its Homeownership Option Voucher to purchase another home, but may reapply, if eligible, for the Housing Choice Voucher rental program.

## **20.7 Homeownership Obligations**

To receive financial assistance under the Housing Choice Voucher Homeownership program, the family must execute a Statement of Homeowner Obligations prior to taking title to the home. To continue to receive homeownership assistance, a household must comply with the obligations, which may be revised by HPD as warranted, and are as follows:

- The family must comply with the terms of any mortgage and other legal documents that secure the debt used to purchase the home, and any refinancing of such debt;
- The family must maintain the home as its principal residence for the period of time the household is receiving assistance, and the home may not be the residence of other households. The family may not move more than once during any year period;
- The family must supply to HPD the required Housing Choice Voucher information regarding income and household composition on an annual basis in order to calculate the appropriate Housing Assistance Payment during the term of homeownership assistance;
- The family must immediately notify HPD if the household income changes and provide the information necessary to complete an interim recertification;
- The family must provide HPD with information on the following:
  - any mortgage or other debt used to purchase the home and any refinancing of such debt;
  - any satisfaction or payment of mortgage debt; any sale or other transfer of any interest in the home; and
  - the household's homeownership expenses.
- The family must sign an authorization allowing HPD, its designees and all of the lenders holding mortgages to their home to disclose to each other information as it pertains to its mortgage application and other records, which each party may require;

- The family must immediately notify HPD if it becomes delinquent and/or defaults on a mortgage securing any debt incurred to purchase the home, and must agree to work with HPD's designated housing counselors to work out terms for becoming current;
- The family must, at annual recertification, document to HPD that it is current on mortgage, insurance, taxes and utility payments and certify that no additional debt or liens have been placed on the property; and
- An adult family member may be required to participate in ongoing post-purchase counseling and attend courses required by HPD during the first year of homeownership or as needed upon recommendation by the first or second mortgagor.

HPD reserves the right to recapture homeownership assistance over a ten-year period as detailed in the Homeownership agreement, the HUD Final Rule and 24 CFR Part 982.640.

HPD reserves the right to re-inspect the home during the period of housing assistance.

## **21 PROJECT BASED VOUCHERS**

### **21.1 Introduction**

This section of the Administrative Plan describes HPD's policies related to implementation of the Project Based Voucher (PBV) program pursuant to the Final Rule published at 24 CFR 983 on October 15, 2005.

### **21.2 Applicability of Tenant-Based Voucher Program Policies to Project Based Voucher Program**

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, HPD's policies for the tenant-based voucher program described in the HCV Administrative Plan will also apply to the PBV program administered by HPD.

### **21.3 Equal Opportunity**

HPD will comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program, including the PHA Plan certification on civil rights and affirmatively furthering fair housing.

### **21.4 Program Size**

The total number of PBV units will not exceed twenty percent of HPD's tenant-based budget allocation.

### **21.5 Eligible Unit Types**

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of HPD selection, the units substantially comply with HQS.

#### **21.5.1 Ineligible Unit Types**

HPD will not attach PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing.

HPD will not attach PBV assistance to a unit occupied by an owner.

HPD will not attach PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that HPD may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or HPD in accordance with HUD requirements.

## **21.6 Limits on Number of PBV Units in Buildings**

Pursuant to HUD regulations, HPD will not provide PBV assistance for units in a building if the total number of dwelling units in the building that will receive PBV assistance during the term of the PBV HAP contract is more than 25% of the number of dwelling units (assisted or unassisted) in the building except where:

- The units are in a single-family building (with four or fewer units);
- The units qualify as “excepted units” as defined below.

## **21.7 Exceptions to PBV 25% Unit Cap**

“Excepted units” are units in a multifamily building that are specifically made available for “qualifying families.” Qualifying families are:

- Elderly or disabled families; or
- Families receiving supportive services.

Generally, it is HPD’s intention to focus on and limit PBV assistance to elderly and disabled families. Based on HUD guidance, HPD may consider PBV assistance for enhanced developments undergoing the conversion process

### **21.7.1 Requirements Applicable to Households Residing in Excepted Units**

For excepted units occupied by elderly or disabled families, HPD will not require participation in supportive services as a requirement of program participation.

“Families receiving supportive services” must have at least one household member receiving at least one of the following qualifying supportive services depending on the needs of the family:

- Case management;
- Employment skills development and job training;
- Family support services;
- Parenting skills, child care skills, family budgeting and similar related services;
- Housekeeping and homemaking activities;
- Treatment for drug or alcohol addiction.

For all excepted units, at the time of initial lease execution, a family receiving supportive services must sign a statement of family responsibility in a form approved by HPD. This statement must also be signed by HPD and the building owner. The statement of family responsibility must contain a description of all the family’s obligations including requirements for participation in supportive service programs.

If a family receiving supportive services successfully completes the required supportive services, the unit that the family resides in will continue to be considered an excepted unit for as long as the family resides in the unit.

If a family receiving supportive services fails to complete the required supportive services without good cause, then HPD must terminate assistance to the family and the owner may terminate the lease.

HPD will require owners to submit periodic reports on family compliance with supportive service requirements. HPD will also review family compliance with their responsibilities under the statement of family responsibility at least annually as part of the annual recertification process.

### **21.7.2 Relocation Assistance**

As previously noted, HPD will not select, execute an agreement to enter in a HAP contract (AHAP) or execute a HAP contract for a development for a unit occupied by a family that is ineligible for participation in the PBV program.

Notwithstanding the above, any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24. The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. HPD may not use voucher program funds to cover relocation costs; however, HPD may use its HCV administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation

benefits is consistent with state and local law. Use of the administrative fee for these purposes will also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

Acquisition of real property for a PBV project is also subject to the URA and 49 CFR part 24, subpart B.

## **21.8 Selection of PBV Owner Proposals**

Prior to selection of a proposal for PBV assistance, HPD will determine that:

- a) the property is eligible housing;
- b) the project complies with regulatory caps on the number of PBV units per building/project;
- c) the project meets the applicable site selection standards; and
- d) the project complies with other applicable HUD regulations and requirements for the PBV program.

HPD will select PBV owner proposals pursuant to either of the methods described at 24 CFR 983.51(b) (1) and (2). In selecting proposals for PBV assistance pursuant to 24 CFR 983.51(b)(2), HPD will consider those proposals for housing assisted under an existing or future federal, state or local housing assistance program, community development or supportive services program that requires competitive selection of proposals. To be eligible for PBV selection, the project must have been selected:

- a) by HPD;
- b) within the last three years of the proposal selection date;
- c) through a competitive process;
- d) without any consideration that the project would receive PBV assistance.

HPD will directly contact specific owners that have already been selected for federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance. Alternatively, HPD program intermediaries may nominate housing developments for PBV assistance.

HPD anticipates that PBV owner selection will generally be accomplished through the method described in 24 CFR 983.51(b)(2) and in the preceding paragraphs. However, HPD may at its discretion and subject to funding availability, elect to issue a Request for PBV Proposal pursuant to 24 CFR 983.51 (b)(1). HPD will utilize this method if it determines that this method has a reasonable likelihood of generating proposals for PBV assistance that gather HPD and the City's housing goals and that conform to PBV requirements. The selection criteria will be published on HPD's website and in at least one published circulation with a minimum of 30 days for response to requests for proposals. Selection criteria may include but are not limited to adherence to HPD's goals of creating and maintaining affordable housing, population assisted by the projects, level of rehabilitation required and previous participation with HPD programs.

HPD will then review and evaluate these proposals on their merits using any published selection criteria and the following factors:

- Extent to which the proposal complements other HPD housing and neighborhood revitalization activities;
- Extent to which PBV assistance will facilitate project feasibility; and
- Extent to which the proposal furthers HPD's goal of deconcentrating poverty and expanding housing and economic opportunities.

Proposals selected for PBV assistance must meet all of the other required criteria specified herein including subsidy layering, environmental review and site and neighborhood standards.

### **21.8.1 Notification of Owner Selection**

HPD will notify selected owners within 60 days of its final decision to select the owner's proposal or HPD nomination for PBV funding. HPD will maintain records of its evaluation and selection process which will be available upon request to the public. Such records will be maintained for a one year period.

### **21.9 Subsidy Layering**

HPD will only provide PBV assistance in accordance with HUD's subsidy layering requirements at 24 CFR 4.13 in accordance with PIH Notice 2013-11. HPD will submit the necessary documentation to HUD for a subsidy layering review. HPD will not enter into an agreement to enter into a HAP contract or a HAP contract until HUD (or an independent entity approved by HUD) has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

The HAP contract will contain the owner's certification that the project has not received and will not receive before or during the term of the HAP contract any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

### **21.10 Site and Neighborhood Standards**

HPD will select units or sites for PBV assistance only where HPD has determined that housing on the site: a) is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities consistent with regulations and HPD's PHA Plan and Administrative Plan; b) will facilitate and further comply with the applicable provisions of Title VI of the Civil Rights Act and other relevant provisions as cited at 24 CFR 983.57; c) meets the site selection requirements described in 24 CFR 8.4(b)(5); and, d) meets the HQS site standards at 24 CFR 982.401(l). HPD will limit approval of sites for PBV assistance to census tracts that have poverty concentrations of 20% or less except where HPD determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20%, such as sites.

### **21.11 Existing and Rehabilitated Housing**

HPD will not provide PBV assistance for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

### **21.12 New Construction Housing**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless HPD determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area;
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

## **21.13 Environmental Review**

HPD activities under the PBV program will be conducted in conformance with HUD environmental regulations at 24 CFR parts 50 and 58 and at 24 CFR 983.58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969.

### **21.13.1 Dwelling Unit Standards**

The housing quality standards (HQS) for HPD's tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, cooperative housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 will not apply to the PBV program.

The lead-based paint requirements for the tenant-based voucher program will not apply to the PBV program. Instead, the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

In addition to mandatory HQS standards, HPD may also identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. HPD will specify any special design standards or additional requirements in the agreement to enter into HAP contract, and the HAP contract.

## **21.14 Accessibility**

Housing provided with PBV assistance must comply with the program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. HPD will ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, will comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

## **21.15 Inspections**

### **21.15.1 Pre-Selection**

HPD will examine the proposed site before the proposal is selected. To qualify as existing housing, units must substantially comply with HQS on the proposal selection

date. However, HPD will not execute the HAP contract until the units fully comply with HQS.

### **21.15.2 Pre-HAP Contract**

HPD will inspect each contract unit before execution of the HAP contract. HPD will not enter into a HAP contract covering a unit until the unit fully complies with HQS.

### **21.15.3 Turnover**

Before providing assistance to a new family in a contract unit, HPD will inspect the unit. HPD will not provide assistance on behalf of the family until the unit fully complies with HQS.

### **21.15.4 Biennial**

At least biennially during the term of the HAP contract, HPD will inspect a random sample, consisting of at least 20% of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement. If more than 20% of the sample of inspected contract units in a building fails the initial inspection, HPD will re-inspect 100% of the contract units in the building.

### **21.15.5 Other**

In addition to pre-selection, turnover and annual inspections, HPD will inspect contract units as needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract.

Inspections follow up and supervisory quality control inspection procedures will be the same as those described in Chapter 8 of this plan.

## **21.16 Special Requirements for Newly Constructed or Rehabilitated Housing**

This section describes specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing.

### **21.16.1 Agreement to Enter into HAP (AHAP)**

HPD will enter into an agreement to enter into a HAP (AHAP) with the owner after receiving notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started. The AHAP will be in the form required by

HUD. At a minimum, the AHAP will describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Deadlines for completion of the housing;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 apply to units under the AHAP. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the AHAP;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the AHAP. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by HPD, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.
- Requirement for submission of evidence of completion of work.

#### **21.16.2 Labor Standards**

If an AHAP covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the AHAP will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates. The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations.

#### **21.16.3 Section 3 Requirements**

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

#### **21.16.4 Owner Disclosure**

The AHAP and the HAP contract will include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of

parties excluded from federal procurement and non-procurement programs. The owner must also disclose any possible conflict of interest that would be a violation of the AHAP, the HAP contract, or HUD regulations.

Upon completion of construction, the owner must submit certifications to HPD in a form specified by HPD stating that:

- The work has been completed in accordance with HQS and all requirements of the AHAP; and
- The owner has complied with labor standards and equal opportunity requirements in development of the housing.

HPD may require owners to submit additional documentation as evidence of completion as needed on a case-by-case basis.

### **21.16.5 HPD Acceptance of Completed Units**

Upon notification by the owner that the PBV housing is completed, HPD will inspect to determine if the housing has been completed in accordance with the AHAP, including compliance with HQS and any additional requirements imposed under the AHAP. HPD will also determine if the owner has submitted all required evidence of completion. If the work has not been completed in accordance with the AHAP, HPD will not enter into the HAP contract. If HPD determines the work has been completed in accordance with the AHAP and that the owner has submitted all required evidence of completion, HPD will execute a HAP contract with the owner.

### **21.17 Housing Assistance Payment (HAP) Contract**

HPD will enter into a HAP contract for each PBV project. The HAP contract will specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building(s);
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;

- The HAP contract term, which must be no less than one year and no more than fifteen years, to be negotiated by HPD with the owner on a case by case basis;
- The number of units in any building that will exceed the 25% per building cap, which will be set-aside for occupancy by qualifying families; and
- The initial rent to owner for the first 12 months of the HAP contract term.

Within one year before expiration of the HAP contract, HPD may extend the term of the contract for an additional term of up to five years if HPD determines an extension is appropriate to continue providing affordable housing for low-income families. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

The HAP contract must provide that the contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by HPD in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, HPD may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to HPD. In this case, families living in the contract units will be offered tenant-based assistance.

HPD will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the HCV voucher program.

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term. The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

## **21.18 Changes to HAP Contract to Substitute, Add or Subtract PBV Units**

At HPD's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Before any such substitution can take place, HPD must inspect the proposed unit and determine the reasonable rent for the unit.

At HPD's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per building and on the overall size of HPD's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same building. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

If any PBV units have been vacant for 120 days, HPD may give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The amendment to the HAP contract will be effective the first day of the month following the date of HPD's notice.

### **21.19 Vacancy Payments**

HPD may, on a case-by-case basis, determine if the owner will be provided with vacancy payments. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments. The HAP contract may provide for vacancy payments to the owner for an HPD-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month subject to the limitations and requirements detailed below. The amount of the vacancy payment will be determined by HPD and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

HPD will only make vacancy payments if:

- The owner notifies HPD in writing within five calendar days certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by HPD to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by HPD and must provide any information or substantiation required by HPD to determine the amount of any vacancy payment.

If HPD determines that the owner is responsible for a vacancy and, as a result, is not entitled to either a vacancy payment or the right to keep the housing assistance payment for the month in which the family vacated the unit, HPD will notify the landlord of the amount of housing assistance payment that the owner must repay.

## **21.20 Waiting List and Occupancy of PBV Housing**

Applicants for PBV assistance must meet the same eligibility requirements as applicants for HPD's tenant-based voucher program. HPD will utilize separate project-based waiting lists for each development receiving project-based vouchers. Applicants will be referred by the sponsor for placement on the appropriate project-based waiting list. Eligible applicants who have previously indicated in writing their interest in receiving information on project-based voucher availability will also be referred to the sponsor for screening.

In addition, the following specific provisions apply solely to the PBV program:

*In Place Family:* An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by HPD is considered an "in-place family." These families are afforded protection from displacement under the PBV rule; however, they may be determined ineligible based on HPD's eligibility and suitability assessment. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on HPD's waiting list. Once the family's continued eligibility is determined, the family will be given an absolute selection preference and referred to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements. This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

*Accessible Units:* When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, HPD will refer families who require such features to the owner.

*Offers of PBV Units:* HPD will not take any of the following actions against a family from the regular waitlist who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant on the waiting list for tenant-based voucher assistance if they are eligible;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the HPD's selection policy;
- Remove the applicant from the tenant-based voucher waiting list.

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

### **21.21 Leasing of Project-based unit**

HPD will make housing assistance payments to the owner in accordance with the HAP contract for contract units leased and occupied by eligible project-based voucher families during the HAP contract term. Per HUD regulations, payments will not begin on behalf of a PBV tenant until after the following events:

- Tenant has attended a briefing;
- Unit has a Passed HQS Inspection;
- Tenant submitted all necessary documents to confirm income and program eligibility;
- Landlord has submitted a lease and tenancy addendum with the rent breakdown and effective date determined by HPD.

Lease effective date will be the 1<sup>st</sup> or 15<sup>th</sup> of the month following a tenant briefing and passing an HQS inspection. The landlord will have 60 calendar days to submit an executed lease agreement to HPD. If the landlord fails to do so by the deadline given, HPD will void the lease effective date and will set a new future effective date.

### **21.22 Termination of Tenancy**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program. In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

#### **21.22.1 Non-Compliance with Supportive Services Requirement**

If a family is living in a project-based unit that is excepted from the 25% per building cap on project-basing because of participation in a supportive services program, and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

#### **21.22.2 Tenant Absence from the Unit**

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by HPD policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for any reason for more than 180 consecutive days.

### **21.23 Security Deposits**

The owner may collect a security deposit from the tenant; however, HPD prohibits security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. When the tenant moves out of a contract unit, the

owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. HPD has no liability or responsibility for payment of any amount owed by the family to the owner.

### **21.24 Overcrowded, Under-Occupied and Accessible Units**

If HPD determines that a family is occupying a wrong size unit, based on HPD's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, HPD will promptly notify the family and the owner of this determination, and offer the family the opportunity to receive continued housing assistance in another unit. HPD will offer the family the following types of continued assistance in the following order, *based on the availability of assistance*:

- PBV assistance in the same building or project;
- PBV assistance in another project; and
- Tenant-based voucher assistance.

When HPD offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, HPD will terminate the housing assistance payments at the expiration of this 30-day period. HPD may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

### **21.25 Family Right To Move**

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to HPD. If the family wishes to move with continued tenant-based assistance, the family must contact HPD to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, HPD is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, HPD will give the family priority to receive the next available opportunity for continued tenant-based assistance (but not priority over

Enhanced or new PBV developments. If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

## 21.26 Rent to Owner

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by HPD, not to exceed 110% of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent;
- The rent requested by the owner.

For certain tax credit units, the rent limits are determined differently than for other PBV units. These different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract. *A qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50% of households have an income of less than 60% of Area Median Gross Income (AMGI), or where the poverty rate is at least 25% and where the census tract is designated as a qualified census tract by HUD;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same building and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds the HPD-determined amount (not to exceed 105 % of the fair market rent or any approved exception payment standard). *Tax credit rent* is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent;
- The rent requested by the owner.

When determining the initial rent to owner, HPD will use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, HPD will use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion and upon the owner's request, HPD may, for initial rent use the amounts in effect at any time during the 30-day period immediately before the beginning date of

the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

## **21.27 Rent Reasonableness**

HPD will redetermine rent reasonableness:

- Whenever there is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary for the unit sizes specified in the HAP contract as compared with the FMR in effect one year before the contract anniversary
- Whenever HPD approves a change in the allocation of responsibility for utilities between the owner and the tenant.
- Whenever the HAP contract is amended to substitute a different contract unit in the same building.
- Whenever there is any other change that may substantially affect the reasonable rent.

The reasonable rent of a unit receiving PBV assistance will be determined by comparison to rent for other comparable unassisted units. HPD will not establish rent levels in excess of those approved by the Rent Guidelines Board and DHCR. When making this determination, HPD will consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

For each unit, the comparability analysis will use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis will show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and will be retained by HUD. The comparability analysis may be performed by HPD staff or by another qualified person or entity, provide that they do not have any direct or indirect interest in the property.

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, HPD may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;

- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- A project receiving low-income housing tax credits;
- Any other type of federally subsidized project specified by HUD.

### **21.28 Rent Increases**

Requests for a rent increase for Project Based Voucher assisted units must be made in writing by the owner at the annual anniversary date of the HAP contract. Requests must be submitted at least 60 days in advance of the HAP anniversary date.