



# **Texas Department of Housing and Community Affairs**

## **Section 8 Housing Choice Voucher Program Administrative Plan**

**Updated September 2022**

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## **Chapter 1: OVERVIEW OF TDHCA, THE PROGRAM AND THE PLAN**

### **PART I: INTRODUCTION**

The Texas Department of Housing and Community Affairs (the “PHA”, “TDHCA,” or the “Department”) serves as a public housing authority for the purpose of receiving funding for the Housing Choice Voucher (HCV) program (HCVP) from the United States Department of Housing and Urban Development (HUD). TDHCA is an agency of the State of Texas, not a federal department or agency. A public housing agency is a governmental or public body, created and authorized to develop and operate housing and housing programs for low-income families. TDHCA enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. TDHCA will ensure compliance with federal laws, regulations and notices and must establish policy and procedures to clarify federal requirements and to ensure consistency in program operation.

This chapter contains information about TDHCA and its programs with emphasis on the HCV program. It also contains information about the purpose, intent, and use of the plan. The HCVP is the only Department program covered by this Administrative Plan.

Administration of the housing programs and the functions and responsibilities of the Department staff are subject to the Personnel Policies and Procedures of the Department, the Equal Opportunity Plan, the annual and periodic PHA Plans submitted to HUD, and this document, the Section 8 Administrative Plan. All Federal, State, and local housing laws will be followed and the Department will comply with Federal and State Fair Housing regulations.

The HCV Program is designed to promote the overall goal of decent, safe, and sanitary housing by using the Section 8 Program to house eligible families in private rental housing, therefore, increasing the housing stock for very low-income families.

In 1978, the state agency that was later to become TDHCA conducted a survey to identify localities that would be interested in participating in a rural Section 8 program. From among the respondents to this survey, 18 cities, 6 counties, 2 housing authorities, and 1 community action agency were included in the creation of the Department’s HCVP and signed Local Operator contracts with the Department. The first Housing Assistance Payment Program contract was executed in September 1979. That structure has evolved over time and in an effort to streamline work and efficiently use administrative funds, the Department has eliminated the role of the Local Operators and the vouchers are now being administered by Department staff.

The Department is responsible for the operation of the Section 8 Housing Choice Voucher Program, which provides rental assistance for low-income families and individuals, including the elderly and persons with disabilities, to attain safe, decent and sanitary housing.

### **ORGANIZATIONAL SET UP**

The HCVP at TDHCA (also called “Section 8”) is overseen by the Executive Director, the Deputy Executive Director of Programs, and the Director of the Community Affairs Division of the Department. *Section 8* has a Program Manager and several Regional Coordinators. Outreach activities and initial inspections are conducted by Department staff that administer the program in specific localities.

### ***TDHCA’S CODE OF CONDUCT***

TDHCA has an ethics policy and conflict of interest policy, which may be periodically updated, that all employees must adhere to and which describes standards of conduct. All employees must adhere to the Department’s Personnel Policies and Rules and other guiding employment documents. All Department employees must abide by all applicable federal and Texas laws, administrative rules, and Department conduct policies, including this ethics policy. A Department employee who violates any provision of the Department’s ethics and conduct policies is subject to termination of their state employment or other employment-related sanctions. A Department employee who violates any applicable federal or Texas law or rule may be subject to civil or criminal penalties in addition to any employment-related sanction.

## **PART II: THE HOUSING CHOICE VOUCHER (HCV) PROGRAM**

### ***HCV PROGRAM BASICS***

The purpose of the HCV program is to provide rental assistance to eligible households - “families” as that term is defined through U.S. Department of Housing and Urban Development rules and regulations. TDHCA is afforded choices in the operation of the program that are included in TDHCA’s administrative plan, a document approved by the governing board of TDHCA.

The HCV program offers mobility to eligible families because they may search for suitable housing anywhere in TDHCA’s jurisdiction and after one year of residency in TDHCA’s jurisdiction have the right to move under portability to another PHA’s jurisdiction. TDHCA may, for good cause, allow a move before one year of residency in TDHCA’s jurisdiction.

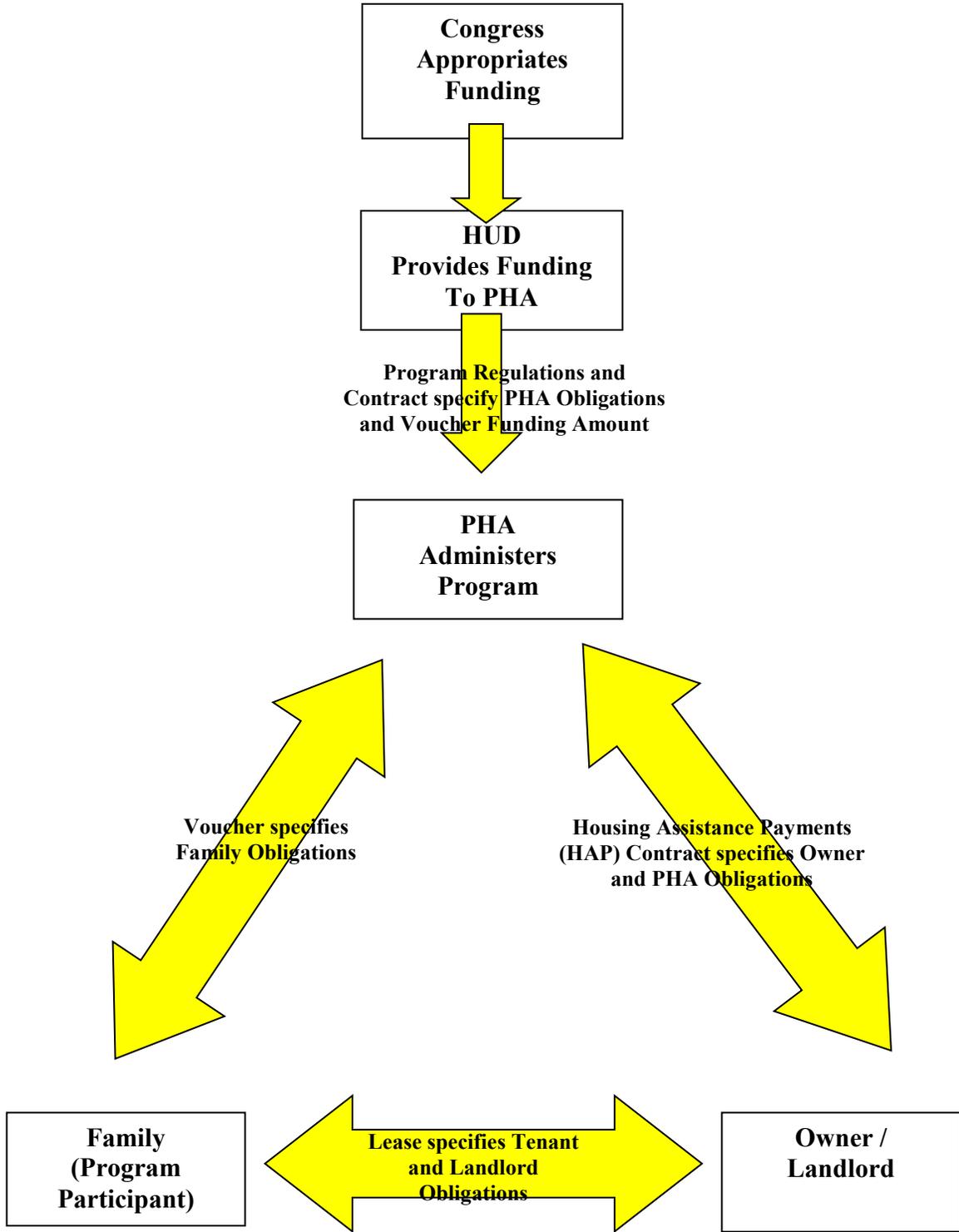
When a family is determined to be eligible for the program and funding is available, TDHCA issues the family a housing voucher. When the family finds a suitable housing unit, TDHCA will enter into a contract with the owner and the family will enter into a lease with the owner. Each party makes their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

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

### ***THE HCV PARTNERSHIPS***

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

For the HCV program to work and be successful, all parties involved – HUD, TDHCA, the owner, and the family – have important roles to play. The roles and responsibilities of all parties are defined in federal regulations and in legal documents that parties execute to participate in the program. The chart on the following page illustrates key aspects of these relationships.



### *What does HUD do?*

HUD has the following major responsibilities:

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

### *What does TDHCA do?*

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

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

### *What does the Owner do?*

The owner has the following major responsibilities:

- Screen families who apply for tenancy to determine if they satisfy the owner's leasing criteria.
  - TDHCA can provide some information to the owner, but the primary responsibility for tenant screening rests with the owner.
  - The owner should consider family background factors such as rent and bill-paying history, history of caring for property, respecting the rights of others to peaceful enjoyment of the property, compliance with essential conditions of tenancy, whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.
- Comply with the terms of the Housing Assistance Payments contract, executed with TDHCA;
- Comply with all applicable fair housing laws and discriminate against no one on the basis of protected class status;

- Maintain the housing unit by making necessary repairs in a timely manner; and
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

*What does the Family do?*

The family has the following responsibilities:

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

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

**APPLICABLE REGULATIONS**

Applicable regulations include but are not limited to:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Section 8 Project-Based Assistance: Housing Choice Voucher Program

**PART III. THE HCV ADMINISTRATIVE PLAN**

**OVERVIEW AND PURPOSE OF THE PLAN**

HUD requires that TDHCA have an administrative plan. The purpose of the administrative plan is to establish policies for carrying out the program in a manner consistent with HUD requirements and local goals and

objectives contained in TDHCA's agency plan. This administrative plan is a supporting document to TDHCA agency plan, and is available on the Department's website for public review as required by 24 CFR Part 903. The Plan is organized to provide information to users in particular areas of operation.

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

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

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

### ***CONTENTS OF THE PLAN (24 CFR §982.54)***

HUD regulations contain a list of what must be included in the administrative plan. TDHCA's administrative plan covers policies on these subjects:

- Selection and admission of applicants from TDHCA waiting list, including any admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening TDHCA's waiting list (Chapter 4);
- Issuing or denying vouchers, including the policy governing the voucher term and any extensions or suspensions of the voucher term, and whether and how TDHCA allows extensions or suspensions of the voucher term and how TDHCA determines the length of any extension or suspension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to TDHCA for a special purpose (*e.g.*, persons with disabilities), including funding for specified families or a specified category of families (Chapter 4);
- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; and standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 24 CFR §982.553 (Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12);
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);

- The process for establishing and revising voucher payment standards (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (*e.g.*, use of shared housing) (Chapter 15);
- Policies concerning payment by a family to TDHCA of amounts the family owes TDHCA (Chapter 16);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- PHA screening of applicants for family behavior or suitability for tenancy (Chapter 3).

#### ***UPDATING AND REVISING THE PLAN***

TDHCA will revise this administrative plan as needed to comply with changes in HUD regulations, PHA operations, to address new programs when applicable, and to ensure staff consistency. In May 2016, the Plan was approved by the Department's Governing Board (Board), the pertinent sections included in the Agency Plan, and a copy provided to HUD. In May 2016, the Department's Board authorized that subsequent plan changes are authorized to be made by either the Executive Director or Deputy Executive Director of Programs, of the Department, both duly authorized PHA officials. Certain changes such as approval of a new service area or activity, or decisions where HUD requires Board approval will be taken back to the Department's Board.

# Chapter 2: FAIR HOUSING AND EQUAL OPPORTUNITY

## INTRODUCTION

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

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

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

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the housing choice voucher program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

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

## PART I: NONDISCRIMINATION

### OVERVIEW

Federal laws require PHAs to treat all applicants and participants equally, providing the same quality of service, regardless of family characteristics and background. TDHCA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations and other requirements governing fair housing and equal opportunity in housing and employment, including (as applicable):

- Title VI of the Civil Rights Act of 1964;
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988);
- Executive Order 11063;
- Section 504 of the Rehabilitation Act of 1973;
- The Age Discrimination Act of 1975;
- Title II and Title III of the Americans with Disabilities Act
- Violence Against Women Reauthorization Act 2013 (VAWA); and
- The Equal Access to Housing in HUD Program Regardless of Sexual Orientation or Gender Identity Final Rule, published in the Federal Register, February 3, 2012.

When more than one civil rights law applies to a situation, the laws will be read and applied together. Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted. The US Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity in housing and employment.

The Fair Housing Policy of the Department is to comply fully with all federal and state non-discrimination laws and in accordance with the lawfully promulgated rules and regulations governing fair housing and equal opportunity in housing and employment, and with the Americans with Disabilities Act.

Specifically, the Department will not discriminate, based on race, color, religion, sex, handicap, familial status, or national origin, deny any family or individual the opportunity to apply for or receive assistance under HUD's Section 8 programs, within the requirements and regulations of HUD and other regulatory authorities. To further its commitment to full compliance with applicable civil rights laws, the Department will provide access to information to Section 8 participants regarding "discrimination." In addition, this subject will be discussed during the briefing session and any complaints will be documented and made part of the applicant/participant file.

TDHCA will comply with HUD's requirement of Affirmatively Furthering Fair Housing.

Generally, TDHCA is not permitted to inquire about the nature or extent of a person's disability [24 CFR §100.202(c)]. Except as necessary to qualify for a preference or to evaluate a reasonable accommodation request TDHCA will not inquire about a person's type of disability or characteristics of that disability. TDHCA will not inquire about or details of treatment for a disability or medical condition. If TDHCA receives a verification document that provides such information, TDHCA will not place this information in the tenant file.

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

- Inquiry into an applicant's ability to meet the requirements of tenancy;
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability;
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability;
- Inquiry to determine if a requested reasonable accommodation is related to a person's disability;
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;  
or
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

### ***NONDISCRIMINATION***

Federal regulations prohibit discrimination against certain protected classes. TDHCA shall not discriminate because of race, color, sex, religion, familial status, age, disability, marital status, gender identity, sexual orientation, or national origin. Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

TDHCA will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program;
- Provide housing that is different from that provided to others;
- Subject anyone to segregation or disparate treatment;
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program;
- Treat a person differently in determining eligibility or other requirements for admission;

- Steer an applicant or participant toward or away from a particular area based any of these factors;
- Deny anyone access to the same level of services as those without such characteristics, unless otherwise allowed by law or regulations;
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program;
- Discriminate in the provision of residential real estate transactions;
- Discriminate against someone because they are related to or associated with a member of a protected class; or
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons because they are members of a protected class, except as otherwise allowed by law or regulations.

### ***PROVIDING INFORMATION TO FAMILIES AND OWNERS***

TDHCA will take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, TDHCA will provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR §982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because they are members of protected classes in connection with the contract.

In order to affirmatively further fair housing, the Department will comply with the following:

- 1) The Department will provide all voucher recipients the HUD Fair Housing Guide that outlines the Fair Housing Act, protection available to persons with disabilities, and how to file a complaint.
- 2) The Department's offices will display in English, Spanish, or other appropriate languages the Equal Housing Opportunity Posters. Posters describe fair housing law and how to file a complaint.
- 3) The Department will provide all applicants and voucher recipient's information on how to file a fair housing complaint, including the provision of the toll-free number for the Fair Housing Complaint Hotline: 1-800-669-9777. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 1-800-887-8339.
- 4) The Department will provide information on the advantages of moving to an area that does not have a high concentration of low income families and a map reflecting the poverty levels for census tracts, median incomes, school rating information and possible properties.

### ***DISCRIMINATION COMPLAINTS***

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

For families and/or individuals who report apparent discrimination in obtaining assisted housing, the Department shall assist them by providing the family/individual with a HUD Housing Discrimination Information Form HUD-903.1 (or subsequent form). The individual can complete this form and report apparent discrimination to the Fort Worth HUD Office of Fair Housing and Equal Opportunity. The Department has a comprehensive website dedicated to Fair Housing information; tenants can find information there that will

direct them to the appropriate contacts for complaints including the process outlined in 10 Texas Administrative Code (TAC) §1.2.

## **PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES**

### **OVERVIEW AND POLICY**

One type of disability discrimination prohibited by the Fair Housing Act and Section 504 is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program.

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

For those applicants or participants who require a type of accommodation, there will be a statement regarding requests for accommodations on the intake application, reexamination documents, and on various notices of adverse action by the Department. The statement will read:

*"If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact your assigned Regional Coordinator." A specific name and phone number will be indicated as the contact for requests for accommodation for persons with disabilities.*

### **DEFINITION OF REASONABLE ACCOMMODATION**

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

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

### **TYPES OF REASONABLE ACCOMMODATIONS**

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

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

- Displaying posters and other housing information in locations throughout the Department's office in such a manner as to be easily readable from a wheelchair.

### ***REQUEST FOR AN ACCOMODATION***

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, will treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]. TDHCA will adhere to, as applicable, 10 TAC §1.1, Reasonable Accommodation Requests to the Department, or 10 TAC §1.204, Reasonable Accommodations, in the handling of requests.

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

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

The Department will encourage the family to make its request in writing for a reasonable accommodation any time the family indicates that an accommodation is needed, whether or not a formal written request is submitted. Information about requesting a reasonable accommodation will be included in the HCV client-briefing packet.

### ***VERIFICATION OF DISABILITY***

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

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

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

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

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

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

- Medical or other records not required by regulation will not be accepted or retained in the participant file.

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

Consistent with the joint statement of the Departments of HUD and Justice relating to reasonable accommodations under the fair housing act, the Department will approve a request for an accommodation if the following three conditions are met:

- The request was made by or on behalf of a person with a disability;
- There is a disability-related need for the accommodation; and
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on TDHCA, or fundamentally alter the nature of TDHCA's HCV operations (including the obligation to comply with HUD requirements and regulations).

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

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

After a request for an accommodation is presented to the Department, the Department will communicate with the landlord and then respond, in writing, generally within fourteen calendar days.

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

If the Department believes that the family has failed to agree to a reasonable alternative accommodation after interactive discussion and negotiation, the Department will notify the family, in writing, of its determination generally within fourteen calendar days from the date of the most recent discussion or communication with the family.

Protected health information will not be retained in particular files.

Complaints against owners that refuse to make a reasonable accommodation will be handled under the Department's complaint process in 10 TAC §1.2 (if in a property that the Department monitors) and/or referred to the Texas Workforce Commission.

### ***PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS***

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

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

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication will be available via the Relay Texas service. Either a TTY user or a person using a standard phone may initiate a call through Relay Texas by dialing the relay number 711.

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

### ***PHYSICAL ACCESSIBILITY***

TDHCA will comply with a variety of regulations pertaining to physical accessibility, including the following:

- Section 504 of the Rehabilitation Act of 1973;
- The Americans with Disabilities Act of 1990;
- The Architectural Barriers Act of 1968; and
- The Fair Housing Act of 1988.

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

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

The design, construction, or alteration of PHA facilities (in this case, the Department Offices) must conform, as applicable, to the Uniform Federal Accessibility Standards (UFAS) or the 2010 ADA Standards, with the exceptions outlined in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register 79 FR 29671*. Newly constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

When issuing a voucher to a family that includes an individual with disabilities, TDHCA will include a current list of available accessible units known to TDHCA.

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

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

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

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

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

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

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

#### **OVERVIEW**

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI against discrimination based on national origin.

This part incorporates the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published January 22, 2007, in the *Federal Register*.

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

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

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

LEP considerations associated with TDHCA's announcement of, and handling of, the Waiting List are provided for in 10 TAC §5.802, Waiting List.

#### **ORAL INTERPRETATION**

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

The Department will analyze the various kinds of contacts it has with the public to assess language needs and decide what reasonable steps should be taken. "Reasonable steps" may not be reasonable where the costs imposed substantially exceed the benefits. The Department has an executed contract with translation services providers who can assist in translation for current clients, those on the waitlist, or general inquiries.

#### **WRITTEN TRANSLATION**

Translation is the replacement of a written text from one language into an equivalent written text in another language. In order to comply with written-translation obligations, the Department will provide written Spanish

of all materials in the pre-application and tenant briefing packet; these documents will be provided in other appropriate languages upon request.

## **Part IV: TDHCA POLICY – AFFIRMATIVELY FURTHERING FAIR HOUSING**

### ***OVERVIEW***

The Texas Department of Housing and Community Affairs (the “Department”) is compliant with the U.S. Department of Housing and Urban Development’s requirements relating to Affirmatively Furthering Fair Housing in 24 CFR §903.7(o).

Offering the Housing Choice Voucher Program is one of the most responsive actions that TDHCA, as a Public Housing Authority, can take to offer meaningful, affordable housing options and, thereby, overcome impediments to housing choice. Additionally, when the Department annually approves its payment standards it makes adjustments allowing for a higher payment standard in those areas with higher rents, lower poverty and greater amenities.

In areas of the Department’s jurisdiction where there are significant concentrations of low income and/or minority households, additional efforts may be taken to recruit and retain property owners in less concentrated areas to expand housing choice.

## Chapter 3: ELIGIBILITY

### INTRODUCTION

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

To be eligible for the HCV program:

- The applicant family must:
  - Qualify as a family as defined by HUD and TDHCA.
  - Have income at or below HUD-specified income limits.
  - Qualify on the basis of citizenship or the eligible immigrant status of family members.
  - Contain at least one family member who is either a U.S. citizen or has eligible immigration status before TDHCA may provide any financial assistance.
  - Provide social security number information for family members in compliance with HUD's Rent Reform Notice effective January 2010, unless the family member is 62 or older as of January 2010, and already receiving assistance or has received assistance under a covered housing program.
  - Consent to TDHCA's collection and use of family information as provided for in PHA-provided consent forms.
  - Be eligible for assistance in accordance with the restrictions on assistance to students enrolled in an institution of higher education status (24 CFR §5.612).

TDHCA will determine that the current or past behavior of household members does not include activities that are prohibited by HUD or TDHCA.

- Evidence of Citizenship/Eligible Immigrant Status will not be verified until the family is selected from the waiting list for final eligibility processing for issuance of Voucher.

This chapter contains three parts:

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

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

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

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

### **OVERVIEW**

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

If a TDHCA policy listed below conflicts with requirements under the Violence Against Women's Act 2013, TDHCA will follow federal law/regulation.

### ***FAMILY AND HOUSEHOLD [24 CFR §982.201(C), HUD-50058 IB, P. 13] PIH NOTICE 2014-20***

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

*Family.* To be eligible for assistance, an applicant must qualify as a family. *Family* as defined by HUD includes, but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, a disabled person, near elderly person, or any other single person; or group of persons residing together.

Such group includes, but is not limited to a family with or without children (a child who is temporarily away from the family), a near-elderly family, a disabled family, a displaced family, or the remaining member if a tenant family. The Department has the discretion to determine if any other group of persons qualifies as a family. Gender Identity means actual or perceived gender characteristics. Sexual orientation means homosexuality, heterosexuality, or bisexuality.

The term "family" as used in this policy means either a single person or a group of persons:

1. Sharing a residence whose income and resources are available to meet the family's needs and who are related by blood, marriage, or operation of law (such as guardianship, adoption, etc.), or who show evidence of a stable family relationship. Evidence of "stable family relationship" may include any of the following: birth certificates of the children, joint tax return, prior lease held jointly, joint bank accounts, insurance policies or equivalent documentation as determined by the Department. This includes a household with or without children, (the temporary absence of a child from the home due to placement in foster care should be considered a member of the family).
2. Each family must identify the individuals to be included in the family at the time of application, and must update this information if the family's composition changes.

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

### ***HEAD OF HOUSEHOLD [24 CFR §5.504(B)]***

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

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

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

### **SPOUSE, CO-HEAD, AND OTHER ADULT**

A family may have a spouse or co-head, but not both [HUD-50058 IB, p. 13]. *Spouse* means the marriage partner of the head of household.

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

A *co-head* is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, and has the legal capacity to enter into a lease under State/local law. A family can have only one co-head.

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

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

### **FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY**

*Family Break-up [24 CFR §982.315; Notice PIH 2017-08]*

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

When a family on the waiting list breaks up into two otherwise eligible families, only one of the new families may retain the original application date. Other former family members may make a new application with a new application date if the waiting list is open. If a family breaks up into two otherwise eligible families while receiving assistance, only one of the new families will continue to be assisted.

In the absence of a judicial decision, or an agreement between the original family members, the Department will determine which family retains their placement on the waiting list, or will continue to receive assistance taking into consideration the following factors: (1) the interest of any minor children, including custody arrangements, (2) the interest of any ill, elderly, or disabled family members, (3) any possible risks to family members as a result of domestic violence or criminal activity, and (4) the recommendations of social service professionals.

In accordance with PIH Notice 2017-08, for HUD–Veterans Affairs Supportive Housing (HUD–VASH) vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, or stalking, the victim must continue to be assisted. Upon termination of the perpetrator’s HUD–VASH voucher, the victim should be given a regular HCV if one is available, and the perpetrator’s HUD–VASH voucher should be used to serve another eligible family. If a regular HCV is not available, the victim will continue to use the HUD–VASH voucher, which must be issued to another eligible family upon the voucher’s turnover.

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

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

The Department will transfer the voucher to the qualified person(s), remaining in the subsidized unit after the person(s) who signed the voucher has/have left the premises, other than by eviction. The transfer of assistance is not automatic, but conditional based on whether the remaining person qualifies for assistance on his or her

own merit. In most cases an individual must have received housing subsidy under the program to which he/she claims head of household status for one year before becoming eligible for Section 8 HCV subsidy as a remaining family member. The Department will address each request for a transfer of assistance for remaining family members on a case-by-case basis. In addition, this person must complete forms necessary for HCV assistance within 10 calendar days from the departure of the leaseholder and may remain in the unit for a reasonable time (not more than 60 calendar days from the date individual requests head of household status) pending the verification and hearing process. This person must, upon satisfactory completion of the verification process, execute all required HCV subsidy documents and cure any monetary obligations in order to maintain assistance. Any person who claims him/herself as a remaining member shall, in the event that the Department declares him/her ineligible for remaining member status, be entitled to an informal hearing. The informal hearing process is described in Chapter 16, Section III.C.

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

### ***DEPENDENT [24 CFR §5.603]***

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

An unborn child shall not be considered a dependent. Identifying each dependent in the family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 6.

### ***Joint Managing Conservatorship of Dependents***

Dependents that are subject to a joint managing conservatorship and are with the family at least 50% of the time will be considered a member of the family for purposes of voucher size determination.

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

### ***FULL-TIME STUDENT [24 CFR §5.603, HVC GB P. 5-29 AND 5.880]***

A full-time student (FTS) is a person who is attending school or vocational training on a full-time basis. The educational institution defines the time commitment or subject load that is needed to be full-time. The attended educational institution will supply verification.

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

### ***ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [24 CFR §§5.100 and 5.403 FR Notice 02/03/12]***

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

A *near-elderly person* is a person who is at least 50 years of age but below the age of 62.

An *elderly family* is one in which the head, spouse, co-head, or sole member is at least sixty-two years of age, or disabled or handicapped and may include two or more elderly, disabled or handicapped persons living together, or one or more such persons living with a live-in aide who is determined to be essential to his or her care and

well-being. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

### ***PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR §5.403, FR Notice 02/03/2012]***

#### *Persons with Disabilities*

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities for the purposes are provided in Chapter 2. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

#### *Person with disabilities:*

(1) Means a person who:

(i) Has a disability, as defined in 42 U.S.C. §423;

(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

(A) Is expected to be of long-continued and indefinite duration;

(B) Substantially impedes his or her ability to live independently, and

(C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(iii) Has a developmental disability as defined in 42 U.S.C. §6001.

(2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;

(3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and

(4) Means "individual with handicaps," as defined in 24 CFR §8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

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

#### *Disabled Family*

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

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

### ***GUESTS [24 CFR §5.100]***

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

The length of stay for guests is usually defined by the landlord and indicated in their lease. For HCV program purposes, a guest can remain in the assisted unit no longer than 30 calendar days in a 12-month period. If any individual remains in the unit for more than 30 consecutive days, the head of household must report in writing the additional person(s), and request approval from the owner/manager and the Department to add the family member to the lease and recalculate eligibility. Each visit cannot exceed 14 consecutive days, except for guests

and their dependents seeking temporary sanctuary from family violence, as defined by Section 71.004, of the Texas Family Code, for a period that does not exceed thirty days.

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

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure is expected to last 30 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

Minors and college students who were part of the family but who now live away from home during the school year and are no longer on the lease may visit for up to 90 days per year without being considered a member of the household.

### ***FOSTER CHILDREN AND FOSTER ADULTS***

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

The term *foster child* is not specifically defined by the regulations. A *foster child* is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

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

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

The Department will consider whether the addition of a new occupant will require the issuance of a new voucher.

Children that are temporarily absent from the home because of placement in foster care are discussed in Section 3.

### ***ABSENT FAMILY MEMBERS***

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

#### ***Definitions of Temporarily and Permanently Absent***

Generally, an individual who is, or is expected to be, absent from the assisted unit for 90 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 90 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

Families participating in the program may be absent for a period of 14 calendar days without notifying the Department. If the family anticipates being absent for more than 14 consecutive calendar days, the head of household must request written permission from the LO/ Department prior to leaving the assisted unit. The written request must be submitted 15 calendar days in advance of the anticipated absence. The Department may approve absences in excess of 14 consecutive calendar days for vacation, hospitalization or other good cause. The Department will respond within 10 calendar days of the receipt of the written request.

If an emergency exists, such as hospitalization, the head of household must notify the Department as soon as possible. Verbal request for determination may only be made in emergencies. The Department will respond verbally and follow-up its verbal determination in writing within 10 calendar days of the verbal request.

#### *Absent Students*

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

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

Children temporarily absent from the home because of placement in foster care are considered members of the family. If a child has been placed in foster care, the Department will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

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

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

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

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22]. The Department will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

#### *Return of Permanently Absent Family Members*

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

#### *Absence Due to Incarceration*

If a household has only one member and that member is convicted for more than 45 consecutive days, he or she will be considered permanently absent.

Any member of the household, other than a sole member, will be considered permanently absent if he or she is incarcerated for 45 consecutive days. The Department will determine if the reason for incarceration is for drug-related or violent criminal activity, which may result in the termination of assistance prior to the 45 consecutive days.

#### ***LIVE-IN AIDE (24 CFR §982.316)***

*Live-in aide* means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR §5.403] and must be 18 years of age.

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

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [24 CFR §5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member (see Section 3-I.C.) of a tenant family.

Written verification of the need for a reasonable accommodation will be required from a reliable, knowledgeable professional, such as a doctor, nurse practitioner, social worker, or caseworker, that the live-in aide is essential for the care and well-being of the elderly, near elderly (50-61), or disabled family member.

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

The Department may refuse to approve a particular person as a live-in aide, and may withdraw prior approval if [24 CFR §982.316(b)]:

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The person commits drug-related criminal activity or violent criminal activity; or
- The person currently owes rent or other amounts to the Department or to another PHA in connection with the Section 8 HCV program or public housing assistance under the 1937 Act.

Generally within fourteen calendar days of receiving a request for a live-in aide, including all required documentation related to the request, TDHCA will notify the family of its decision in writing.

## **PART II: BASIC ELIGIBILITY CRITERIA**

### ***INCOME ELIGIBILITY AND TARGETING***

#### *Income Limits*

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

#### *Types of Low-Income Families*

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

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

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

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

### **USING INCOME LIMITS FOR ELIGIBILITY [24 CFR §982.201(B)]**

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

- A *very low-income* family;
- A *low-income* family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR §982.4], which for the Department is when they were issued a voucher by the Department;
  - A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR §248.173; or
  - A low-income or moderate-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR §248.101

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

1. *Disaster*. The Department will provide Housing Choice Vouchers promptly to income eligible individuals and families in communities impacted by a disaster which may include, but is not limited to, communities with a disaster declaration or documented extenuating circumstances such as imminent threat to health and safety. The preference will cover only the areas where the Department currently has oversight on the Section 8 program. Requests for the preference must be made within 90 days of the disaster and may result in the disaster impacted person or family receiving assistance before someone currently in a waiting list.
2. *Project Access*. The Department also may provide a preference for Project Access applicants, if there are insufficient special purpose vouchers to serve the number of households identified in the PHA Plan. The Project Access program utilizes Section 8 Housing Choice Vouchers administered by TDHCA to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing.

### **USING INCOME LIMITS FOR TARGETING [24 CFR §982.201(B)]**

At least 75% of the families admitted to TDHCA's program during a PHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if TDHCA demonstrates that it has made all required efforts, but has been unable to attract an adequate number of qualified extremely low-income families. If 25% of the families admitted during a fiscal year have been very low-income (not extremely low-income), then extremely low income families will be assisted before someone higher in the waiting list who is very low-income.

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

An applicant will not be offered Section 8 assistance under the following circumstance - If the applicant's annual family income exceeds the income limits established by HUD and published in the *Federal Register*, the applicant will be declared ineligible.

## ***CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR PART 5, SUBPART E]***

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

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

### *Declaration [24 CFR §5.508]*

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

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

In general, citizens and nationals are required to submit only a signed declaration that claims their status. However, HUD regulations permit TDHCA to request additional documentation of their status, such as a passport. In addition to signing a citizenship declaration, family members who declare citizenship or national status may be required to provide any of the following additional documentation upon the Department's request:

- United States passport;
- Resident Alien card;
- Registration card;
- Social Security card; or
- Other appropriate documentation.

### *Eligible Non-citizens*

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

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

Per the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) signed into law on October 28, 2000, victims of trafficking are eligible to benefits to the same extent as eligible non-citizen refugees.

The Department will conduct primary verification of eligible immigration status through the INS automated system, Systematic Alien Verification for Entitlements (SAVE). Persons claiming eligible immigration status must provide all of the following evidence:

- The signed declaration of eligible immigration status;
- One of the Department of Homeland Security documents specified in SAVE requirements, such as:
  - Immigrant status under Sections 101(a)(15) or 101(a)(20) of the INA;
  - Permanent residence under Section 249 of INA;
  - Refugee, asylum, or conditional entry status under Sections 207, 208 or 203 if of the INA;
  - Parole status under Section 212 (d)(5) of the INA;
  - Threat to life or freedom under Section 243(h) of the INA; or
  - Amnesty under Section 245A of the INA.
- A signed verification consent form describing transmission and use of the information obtained.

If the SAVE system does not confirm eligible immigration status, the Department will request that a manual search be conducted of Department of Homeland Security records. The Department will request the secondary verification (manual search) by Department of Homeland Security within 10 calendar days of receipt of the initial failed verification. Department of Homeland Security is expected to issue a decision within 30 days of its receipt of the request for a secondary verification. If the secondary verification fails to confirm eligible immigration status, the Department shall notify the family of the right of appeal to Department of Homeland Security. If the Department of Homeland Security is unable to issue a decision within 30 days, the Department of Homeland Security will inform the family and the Department of the reasons for the delay.

When the Department receives a copy of the Department of Homeland Security decision (and the decision does not confirm the declaration of eligible immigration status), the Department will notify the family of its right to request an informal hearing. The informal hearing process is detailed in Chapter 16, Part III.

1. Assistance to an applicant may not be delayed, denied, or terminated, if:

- The primary and secondary verification of any immigration documents that were submitted in a timely manner has not been completed;
- The family member of whom required evidence has not been submitted has moved;
- The family member who is determined not to be in an eligible immigration status following Department of Homeland Security verification has moved;
- The Department of Homeland Security appeals process has not been concluded;
- For a tenant, the Department hearing process has not be concluded;
- Assistance is prorated; and/or
- Assistance for a mixed family is continued.

2. Assistance to an applicant shall be denied and a tenant's assistance shall be terminated upon the occurrence of any of the following:

- Evidence of citizenship (*i.e.*, the declaration) is not submitted in a timely manner;
- Evidence of citizenship and eligible immigration status is submitted in a timely manner, but Department of Homeland Security primary and secondary verification does not verify eligible immigration status;
- The family does not pursue Department of Homeland Security appeal or PHA information hearing rights; and/or

- Department of Homeland Security appeal and informal hearing rights are pursued, but the final appeal or hearing decision is decided against the family member.

3. Notice must be given to the family and shall advise:

- That financial assistance or housing will be denied or terminated, and provide a brief explanation of the reasons;
- That they may be eligible for proration of assistance;
- In the case of a tenant, the criteria and procedures for obtaining relief for mixed families and other families; and
- Any future appeal rights have been exercised.

**An applicant family without any citizens, nationals, or members with eligible immigration status is not eligible for assistance.**

#### *Ineligible Non-citizens*

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

Providing housing assistance to non-citizen students is prohibited [24 CFR §5.522]. This prohibition extends to the non-citizen spouse of a non-citizen student as well as to minor children who accompany or follow to join the non-citizen student.

Such prohibition does not extend to the citizen spouse of a non-citizen student or to the children of the citizen spouse and non-citizen student. Such a family is eligible for prorated assistance as a mixed family.

#### *Mixed Families*

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

#### **INELIGIBLE FAMILIES [24 CFR 5.514(D), (E), AND (F)]**

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

The Department will not assist a family before the verification of at least one family member. When the Department determines that an applicant family does not include any citizens, nationals, or eligible non-citizens, following the verification process, the family will be sent a written notice within fourteen calendar days of the determination.

The notice will explain the reasons for the denial of assistance, that the family may be eligible for pro-ration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with TDHCA. The informal hearing with the

Department may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process. Informal hearing procedures are contained in Chapter 16, Part III.

***TIMEFRAME FOR DETERMINATION OF CITIZENSHIP STATUS [24 CFR 5.508(g)]***

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

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

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

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

***SOCIAL SECURITY NUMBERS [24 CFR §5.216 AND §5.218] PIH NOTICE 2012-10***

Assistance cannot be provided to a family until all SSN documentation requirements are met. A detailed discussion of acceptable documentation is provided in Chapter 7.

If a new member is added to the family, the family must submit the new member's SSN documentation at the time they are added to the household. If any member of the family obtains a previously undisclosed SSN, or has been assigned a new SSN, the documentation must be submitted within 30 calendar days or any approved extensions. Extensions shall not be for more than 90 additional days.

If the family is unable to provide the required documentation of the SSN, TDHCA shall not add the new household member to the family composition until the family provides such documentation. TDHCA is not authorized to generate an alternate identification (ALT ID) for the affected household member.

TDHCA will deny assistance to an applicant family if they do not meet the SSN disclosure, documentation and verification, and certification requirements contained in 24 CFR §5.216. TDHCA will terminate assistance of the entire family even if only one member of the family fails to provide required documentation for a social security number. Note: These requirements do not apply to noncitizens that elect not to declare eligible immigration status.

***FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR §5.230]***

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

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

A consent form must be completed whenever a new adult joins an HCV household. Whenever a current household member turns 18 years of age, they will not be required to sign a consent form until the family's annual appointment unless they are earning income, which would require them to report their income within 30 days of turning 18.

## ***STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR §5.612 AND FR NOTICE 4/10/06]***

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

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

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

### *Definitions*

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

#### *Dependent Child*

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

#### *Independent Student*

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

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

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

- Be at least 24 years old by December 31 of the award year for which aid is sought.
- Be an orphan or a ward of the court through the age of 18.
- Be a veteran of the U.S. Armed Forces.
- Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent).
- Be a graduate or professional student.
- Be married.

- Be a person with a disability who was receiving assistance under Section 8 of the 1937 Act as of November 30, 2005.
- The individual/student was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.
- The individual/student provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

TDHCA will verify that a student meets the above criteria in accordance with the policies in Section 7.

#### *Institution of Higher Education*

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

#### *Parents*

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

#### *Veteran*

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

#### *Determining Student Eligibility*

If a student is applying for assistance on his/her own, apart from his/her parents, PHA must determine whether the student is subject to the eligibility restrictions contained in 24 CFR §5.612. For any student who is subject to the §5.612 restrictions, TDHCA will:

- Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program.
- Determine whether the student is independent from his/her parents in accordance with the definition of *independent student* in this section.
- Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program.
- If TDHCA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, PHA will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 14.

#### *Determining Parental Income Eligibility*

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

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

- If the student's parent is widowed or single, PHA will obtain an income declaration and certification of income from that parent.
- If the student's parents are divorced or separated, PHA will obtain an income declaration and certification of income from each parent.
- If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, PHA will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent. TDHCA will then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

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

***OTHER CRITERIA FOR ADMISSIONS [24 CFR §982.552]***

If any applicant deliberately misrepresents the information on which eligibility or tenant rent is established, PHA may deny assistance and may refer the family file/record to the proper authorities for appropriate disposition. (See Program Integrity Addendum)

**PART III: DENIAL OF ASSISTANCE**

***OVERVIEW***

A family that does not meet the following eligibility criteria discussed in Parts I and II, must be denied assistance. In addition, HUD requires or permits TDHCA to deny assistance based on certain types of current or past behaviors of family members.

*Forms of Denial [24 CFR §982.552(a)(2)]*

Denial of assistance includes any of the following:

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

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

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

- Age, disability, race, color, religion, sex, gender identity, marital status, or national origin. (See Chapter 2 for additional information about fair housing and equal opportunity requirements).
- Where a family lives prior to admission to the program.

- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside TDHCA's jurisdiction (See Chapter 10, Portability).
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock.
- Whether the family includes children.
- Whether a family decides to participate in a family self-sufficiency program.
- Whether or not a qualified applicant has been a victim of domestic violence, sexual violence, dating violence, sexual assault or stalking.

***MANDATORY DENIAL OF ASSISTANCE [24 CFR §982.553(a)]***

HUD requires TDHCA to deny assistance in the following cases:

- Any member of the household has been evicted from federally assisted housing in the last 3 years for drug-related criminal activity. The Department will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past three years for drug-related criminal activity, if the Department is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the Department, or the person who committed the crime, is no longer living in the household.
- TDHCA determines that any household member is currently engaged in the use of illegal drugs, including the distribution, possession, or sale. *Currently engaged in* is defined as any use of illegal drugs during the previous six months. Admission will be denied for 10 years for a conviction of drug trafficking.
- TDHCA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. The Department will consider all credible evidence, including but not limited to, any record of convictions, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. The Department may waive admission/denial if:
  - the person demonstrates to the Department's satisfaction that the person is no longer engaging in drug-related criminal activity or abuse of alcohol;
  - has successfully completed a supervised drug or alcohol rehabilitation program; or
  - has otherwise been rehabilitated successfully, is participating in a supervised drug or alcohol rehabilitation program.
- Any household member that has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing is denied admission for life. A premise is defined as the building or complex in which the dwelling unit is located, including common areas and grounds.
- Any household that includes any individual who is subject to a lifetime registration requirement under a state sex offender registration program is denied admission for life.
- Failure to provide verification of social security number as required by HUD via HUD's Rent Reform Notice effective January 2010.

***OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE***

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

#### *Criminal Activity [24 CFR §982.553]*

If any household member has been convicted in any of the following criminal activities within the past five years, the family will be denied assistance, unless otherwise noted below. The five year period shall begin on the date of the last reported act, completion of sentence and/or probation period.

- *Drug-related criminal activity*, defined as the illegal manufacture, sale, or distribution of a drug, or the possession of a drug with intent to manufacture, sell, or distribute the drug;
- *Violent criminal activity*, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR §5.100];
- Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity (*immediate vicinity* means within a three-block radius of the unit); or
- Criminal activity that may threaten the health or safety of property owners and management staff, and persons performing contract administration functions or other responsibilities on behalf of the Department (including a Department employee).
- Evidence of such criminal activity includes, but is not limited to:
  - Conviction for drug-related (excluding drug use) or violent criminal activity within the past 5 years.
  - Any record of eviction from public or privately owned housing as a result of criminal activity within the past 5 years.
  - A record that an applicant or household member has been paroled or released from a facility for violence to persons or property within the past three years.

In making its decision to deny assistance, the Department will consider the factors discussed in this section. Upon consideration of such factors, the Department may, on a case-by-case basis, decide not to deny assistance.

#### ***PREVIOUS BEHAVIOR IN ASSISTED HOUSING [24 CFR §982.552(C)]***

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

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

The Department **will** deny assistance to an applicant family under the time frames noted below if:

- The family does not provide information that the Department or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to the Department.
- Any family member has been evicted from federally assisted housing in the last three years. The Department can waive this requirement if the person demonstrates to the Department's satisfaction successful completion of a rehabilitation program approved by the Department, or the circumstances leading to the eviction no longer exist.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in the prior five years in connection with any federal or state housing program. Fraud – giving false information on the

application, failure to report changes in household composition or income, or providing false documents is considered fraud;

- The family owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- If the family has not reimbursed any PHA for amounts TDHCA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- The family has breached the terms of a repayment agreement entered into with the Department or an owner, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.
- The family has failed to meet the eligibility criteria described in Section II of this chapter.
- The family has failed to provide information required within the period specified (the applicable dates are contained in the letters from the Department) in the application process.
- The family has refused to sign or submit required consent forms that are provided by the Department for verifying employment and income information.
- The family in the prior one year has violated any family obligation listed on the Housing Choice Voucher.
- A household member is subject to the State of Texas Sex Offender Statue and/ or any other state registration requirements where the family member is known to have resided.
- A family member has engaged in or threatened abusive or violent behavior toward Department personnel. *Abusive or violent behavior towards TDHCA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior. *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

Timeframes noted above begin on the date of application, unless otherwise noted. In making its decision to deny assistance, the Department will consider the factors discussed in this section. Upon consideration of such factors, TDHCA may, on a case-by-case basis, decide not to deny assistance.

## **SCREENING**

### *Screening for Eligibility*

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

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

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

*Screening for Suitability as a Tenant [24 CFR §982.307]*

TDHCA has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The Department will not conduct additional screening to determine an applicant family's suitability for tenancy; owners will be responsible for determining suitability.

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

HUD requires TDHCA to provide prospective owners with the family's current and prior address (as shown in PHA records) and the name and address (if known) of the owner at the family's current and prior addresses.

The Department will inform owners of their responsibility to screen prospective tenants, and may provide, upon request in writing by owner, the family's current address and the name and address of the landlord at the family's current and prior addresses as indicated in the Department's records.

***CRITERIA FOR DECIDING TO DENY ASSISTANCE EVIDENCE [24 CFR §982.553(C)]***

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

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

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

HUD authorizes TDHCA to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandated (see Section 3-III.B). The Department will consider the following factors when making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents;
- The effects that denial of assistance may have on other members of the family who were not involved in the action or failure;
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities;
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future; and
- In the case of drug or alcohol abuse, whether the culpable household member is participating in, has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

- The Department will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

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

As a condition of receiving assistance, a family may be required to agree to removal of a family member from the application who was culpable for an action or failure to act which results in the denial of assistance. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the assisted unit. After admission to the program, the family must present evidence of the former family member's current address upon Department request.

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

If the family includes a person with disabilities, TDHCA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8. If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, the Department will determine whether the behavior is related to the disability. If so, upon the family's request, the Department will determine whether alternative measures are appropriate as a reasonable accommodation. The Department will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

**NOTICE OF ELIGIBILITY OR DENIAL**

*Eligible for Assistance*

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

If the Department determines that a family is not eligible for the program for any reason, the family will be notified promptly in writing. The notice will describe: (1) the reasons for which assistance has been denied (2) the family's right to an informal review, and (3) the process for obtaining the informal review [24 CFR §982.554 (a)]. A VAWA Notice of Occupancy Rights utilizing Form 5380 will be provided to each adult applicant/participant. If a criminal record is the basis of the denial, a copy of the record must accompany the notice. In addition, a copy of the criminal record must be provided to the subject of the record [24 CFR §982.553(d)]. Notice requirements related to denying assistance to non-citizens are contained in Section 3-II.B.

The family will be notified of a decision to deny assistance in writing within fourteen calendar days of the determination. The denial letter will allow the applicant fourteen calendar days to request an informal review (in writing) with the Department. See Chapter 16, for informal review policies and procedures.

**PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING. [PUB.L. 109-162]**

The Violence against Women Reauthorization Act of 2013 (VAWA) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, sexual violence, dating violence, sexual assault or stalking. VAWA adds the following provision to Section 8 of the U.S. Housing Act of 1937, which lists contract provisions and requirements for the housing choice voucher program:

That an applicant or participant is or has been a victim of domestic violence, sexual violence, dating violence, sexual assault or stalking is not an appropriate reason for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.

*Definitions as used in VAWA:*

The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

The term *stalking* means:

- To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate;
- To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
- In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

The term *immediate family* member means, with respect to a person:

- A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
- Any other person living in the household of that person and related to that person by blood and marriage.

*Emergency Transfer Plan*

Emergency Transfers: In accordance with VAWA, the Department allows clients who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the client's current unit to another unit. Clients are able to request a VAWA emergency transfer regardless of sex, gender identity, or sexual orientation. To request a VAWA emergency transfer, clients must submit a VAWA Emergency Transfer Request Form and provide a certification, or other evidence of their choosing, showing that they are a victim of domestic violence, dating violence, sexual assault, or stalking in order for the Department to make a determination regarding a request for a VAWA emergency transfer.

Emergency Transfer Timing and Availability: The Department cannot guarantee that a VAWA emergency transfer request will be approved or how long it will take to process a VAWA emergency transfer request; however, the Department will act as quickly as possible to issue a voucher to a client who is a victim of domestic violence, dating violence, sexual assault, or stalking, subject to HCV transfer policies.

HCV Transfer Hierarchy: Transfers made pursuant to VAWA are considered emergency transfers. Clients who request and are approved for a VAWA emergency transfer will be processed for a transfer voucher in accordance with the Administrative Plan Chapter 10.

***PERSON WITH DISABILITIES [24 CFR §5.403]***

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

*Individual with Handicaps [24 CFR §8.3]/Person With A Disability*

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

- (1) Physical or mental impairment includes:
  - (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
  - (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.
- (2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- (3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) *Is regarded as having an impairment* means:
  - (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
  - (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or (c) Has none of the impairments defined in paragraph (1) of this section but is treated as having such an impairment. The Americans with Disabilities Act definition [28 CFR §35.104] for *Disability* means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.
    - (i) The phrase *physical or mental impairment* means
      - (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special

sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

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

(3) Under activities only covered by the Fair Housing Act, the term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

## Chapter 4: APPLICATIONS, WAITING LIST AND TENANT SELECTION

### INTRODUCTION

When a family wishes to receive Section 8 HCV assistance, the family must submit an application that provides TDHCA with the information needed to determine the family's eligibility. When HCV assistance becomes available, TDHCA will select families from the waiting list in accordance with HUD requirements and PHA policies as stated in the administrative plan, 10 TAC §5.802, and the annual plan. If there is inconsistency between this plan and 10 TAC §5.802, the rule at §5.802 will prevail.

TDHCA is required to adopt a clear approach to accepting applications, placing families on the waiting list, selecting families from the waiting list and must follow this approach consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or TDHCA to receive preferential treatment. Funding earmarked exclusively for families with particular characteristics may also alter the order in which families are served.

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

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

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

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

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

## PART I: THE APPLICATION PROCESS

### OVERVIEW

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

### ***APPLYING FOR ASSISTANCE [HCV GB, PP. 4-11 – 4-16, NOTICE PIH 2009-36]***

The Department will use an electronic application process. Any family that wishes to receive HCV assistance must apply for admission to the program through TDHCAs online application tool during an Application Acceptance Period of 14 calendar days. Form HUD-92006, Supplement to Application for Federally Assisted Housing, must be submitted as an attachment to the Department's application. A preliminary application (pre-

app) is taken by the Department in order to compile a waiting list. The Department may elect to skip the pre-application and use only the full application. When the family comes to the top of the waiting list (or is otherwise selected based on a preference) and the Department is ready to issue a voucher, the family must have completed the full application. The family will also be required to complete a Personal Declaration Form. Individuals who have a disability which would prevent them from making an application online may call the Department to make special arrangements so that Department staff can complete their application in time to be included in the lottery process. A Telecommunications Device for the Deaf (TDD) is available for the deaf.

## **APPLICATION REVIEW**

TDHCA will review each complete pre-application or application received and make a preliminary assessment of the family's eligibility. TDHCA will accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for the grounds stated in the regulations [24 CFR 982.206(b)(2)].

### *Ineligible for Placement on the Waiting List*

If the Department can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list or able to participate in the lottery process described below. Where a family is determined to be ineligible, the Department will send written notification of the ineligibility determination within 14 calendar days of receiving the complete application from the Department at the Department headquarters [24 CFR §982.201(f)]. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

### *Placement on the Waiting List*

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list [24 CFR §982.202(c)]. Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list. The Department will admit a household not on the waiting list or without consideration for a household's placement on the waiting list if HUD has awarded funding that is targeted for families living in specific units. [24 CFR §982.203]

### *Placement on the Project Access, Mainstream, and VASH Waiting List (Special Purpose)*

Due to the demand for housing for persons with disabilities and veterans throughout the State of Texas, the Department takes applications for its Project Access, Mainstream, and VASH programs on an "open enrollment" basis. In the case of Project Access, Mainstream, and VASH:

1. Applications will be accepted at the Department's designated location(s) and electronically during open business hours.
2. Applications are dated in accordance to the date and time the applicant or their case manager submits the completed application. The Department will maintain a designated telephone number where interested persons can receive specific directions on how and when to apply.

Additionally, the application for the jurisdictional waiting list will ask if the household qualifies for any of the open special purpose waiting lists that the Department maintains, except for a project-based waiting list or a waiting list in which a household may not directly apply. The applicant household, if qualified, may be added to one or more special purpose waiting lists at the end of the application acceptance period, but this will not impact their lottery number for the jurisdictional waiting list.

### *Waiting List for Vouchers Other than Project Access, Mainstream, and VASH*

For vouchers not associated with Project Access, Mainstream, or VASH, and limited to the Department's PHA jurisdictional area, the Department will establish a single waiting list and will only take applications when a waiting list period is open.

1. Applications will be accepted at the Department's designated location(s) and online only during a designated open waiting list period of approximately 14 days and according to information posted online and throughout the community.
2. Except for households on a project-based waiting list, all households that are on a special purpose waiting list at the beginning of the application acceptance period and that wish to live in the Department's jurisdictional area will be placed first on the jurisdictional waiting list based on the time they have been on the special purpose waiting list (i.e. oldest time on any special purpose waiting list gets assigned the first number).
3. All other applications received during the open window of time will be assigned a number using a random number generator, called a lottery process. The applications will then be placed in numerical order according to that assigned number. The Department will then place the first 500 applications (inclusive of the households automatically placed on the jurisdictional waiting list because they were on a special purpose waiting list at the beginning of the application acceptance period) on the waiting list. All other applications not within the first 500 applications will not be placed on the waiting list. All applications submitted will be notified in writing of having been added to the waiting list and their number ranking, or that they were not placed on the waiting list.
4. The Department will maintain a website and designated telephone number where interested persons can receive specific directions on how and when to apply.
5. Individuals who have a physical impairment which would prevent them from making an application in person or online may call the Department to make special arrangements to complete their application in time to be included in the lottery process. A Telecommunications Device for the Deaf (TDD) is available for the deaf.
6. Any family requesting an application for Section 8 HCV rental assistance will be given the opportunity to apply as long as the waiting list is open and the Department is accepting applications.

### **ACCESSIBILITY OF THE APPLICATION PROCESS**

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

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

#### *Limited English Proficiency*

TDHCA will take reasonable steps to ensure meaningful access to its programs and activities by persons with limited English proficiency. Chapter 2 provides a full discussion on TDHCA's policies related to ensuring access to people with limited English proficiency (LEP).

## **PART II: MANAGING THE WAITING LIST**

### ***ORGANIZATION OF THE WAITING LIST [24 CFR §982.204]***

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

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

- Applicant name;
- Family unit size (number of bedrooms for which family qualifies under occupancy guidelines);
- Date and time of application;
- Assigned lottery number, if applicable;
- Qualification for any preference, if applicable;
- Racial or ethnic designation of the head of household.

The Department maintains nine waiting lists that cumulatively cover the Department's entire PHA jurisdiction based on waiting lists opened in the past.

#### *Project Access, VASH, and Mainstream*

Three lists are kept for Project Access, Veterans Administration Supportive Housing (VASH) project list, and Mainstream, which are each separately open to receive applications on an ongoing basis. While the VASH and Mainstream vouchers have a dedicated source of voucher assistance, Project Access does not, and operates as a preference population; until 140 vouchers are actively in use by Project Access clients, any new vouchers issued must be first be made available to those on the Project Access waiting list.

#### *Geographic Areas*

The remaining lists are geographically based and are as follows: Ennis, Galveston, Waxahachie, Alamo Area Council of Governments (AACOG), and the Balance of Jurisdiction.

To date, each list has been maintained separately. If additional areas are absorbed by the Department from other voucher administering entities, they will initially be handled as another independent geographic waiting list (*e.g.*, would be a new sixth list) until the list when transferred is depleted, at which time it will merge into the Balance of Jurisdiction.

It is the long-term goal of the Department that the geographically based lists be merged as the individual waiting lists are depleted. Until that occurs, issuance of a voucher, after preferences for Project Access are satisfied, rotates in order through the six lists. For instance if six vouchers are being made available, each of the six areas would receive one. Waiting list households will be offered a voucher in that rotating order until a wait list is depleted, at which time the geographic area covered by that wait list will be blended into the Balance of Jurisdiction. The Balance of Jurisdiction list may be opened for enrollment periodically during this time to ensure voucher opportunities across the entire jurisdiction, however the other five geographic areas that have their own lists will not be reopened (except possibly as a reasonable accommodation or to serve a VAWA household). Only upon their depletion and then absorption into the Balance of Jurisdiction would enrollment possibly be reopened. If additional areas are absorbed by the Department from other voucher administering entities, they will initially be handled as another independent geographic waiting list (*e.g.*, would be a new sixth list) until the list when transferred is depleted, at which time it will merge into the Balance of Jurisdiction. When the Department opens its Waiting List it will do so with only one waiting list, for the entire jurisdictional coverage area.

When the Department permanently absorbs vouchers from another housing authority and is reassigned the ACC by HUD, the waiting list will be maintained, in its existing order, but will not be further expanded, which is the case with the AACOG list. HUD directs that a family that applies for assistance from the HCV program must be offered the opportunity to be placed on the waiting list for any public housing, project-based voucher or moderate rehabilitation program TDHCA operates if: 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs.

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

### ***OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]***

#### *Closing the Waiting List*

A PHA is permitted to close their waiting lists if it has an adequate pool of families to use its available HCV assistance. Alternatively, TDHCA may elect to continue to accept applications only from certain categories of families that meet particular preferences or funding criteria. In general a list will be considered to have an "adequate" waiting list if additional applicants are not expected to be housed within the next 12 month period.

#### *Opening the Waiting List*

The Department will announce the opening of its Waiting List at least 7 calendar days prior to the date applications will first be accepted, but no longer than 45 days prior to the date applications will be accepted, and will open its Waiting List when it has published relevant information relating to the availability and nature of housing assistance for eligible families in a notice. The Department will give public notice by publishing the relevant information regarding the availability and nature of housing assistance for eligible families in suitable media outlets including, but not limited to, newspapers of general circulation, minority media, via electronic notices of the Department, and via other local governments or nonprofits that assist low income households in the target area through the Department's listserv.

The notice must comply with HUD Fair Housing requirements and must specify who may apply, where and when applications will be received. The notice will announce the total number of households TDHCA will place on its Waiting List. To reach persons who cannot read the newspapers, the Department staff will distribute notices to community based organizations providing assistance to the target group.

### ***NOTIFICATION AND OUTREACH ABOUT WAITING LIST [HCV GB, pp. 4-2 to 4-4]***

TDHCA will conduct outreach as necessary to ensure that TDHCA has a sufficient number of applicants on the waiting list to use the HCV resources it has been allotted. Because HUD requires TDHCA to serve a specified percentage of extremely low-income families (see Chapter 4, Part III), TDHCA may conduct special outreach to ensure that an adequate number of such families apply for assistance [HCV GB, p. 4-20 to 4-21].

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

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

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

- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies councils of governments, regional planning councils, and community action agencies, whose jurisdictions include any one of the counties in the jurisdiction of the Department
- Providing application forms to other public and private agencies that serve the low income population
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities

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

### **REPORTING CHANGES IN FAMILY CIRCUMSTANCES**

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

### **UPDATING THE WAITING LIST [24 CFR 982.204]**

#### *Purging the Waiting List*

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

To insure that the Department's waiting lists reflects the most current applicant information the waiting list will be updated and purged no less than every twelve months.

To update the waiting lists, the Department will send an update request to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address on record for the family and to any email address provided by the family. The update request will provide a deadline by which the family must respond, which will be approximately 10 days from the date the letter is sent, and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response to the Department will be in writing and may be delivered in person, by mail, by email or by fax. Responses should be postmarked or received by the Department no later than the deadline specified in the Department's letter.

- If the family fails to respond by the specified deadline, the family will be removed from the waiting list without further notice.
- If the notice is returned to the Department by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.
- If the notice is returned to the Department by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have a new deadline specified by which to respond.

If a family is removed from the waiting list for failure to respond, the HCV Program Director may reinstate the family if s/he determines the lack of response was due to Department error, or to circumstances beyond the family's control. Greater flexibility in these criteria may be provided in the case of Project Access vouchers or to others as a reasonable accommodation.

#### *Removal from the Waiting List*

The Department will remove an applicant's name from the waiting list for the following:

1. Applicants who do not respond to the Department's request for information or updates and as described above under Purging the Waitlist; or
2. Applicants who refuse the Department's offer of tenant-based assistance; or
3. If the Department determines that the family is no longer eligible for assistance (see Chapter 3).

If a household is removed from the waiting list for failure to respond, the Department may reinstate the household to their former position on the waiting list if it determines that the lack of response was due to Department error, or to circumstances beyond the household's control. Greater flexibility in this criteria may be provided as a reasonable accommodation.

If a family is removed from the waiting list because they have failed to respond to the Department's request for more information/updates or the Department has determined that they are no longer eligible for assistance, a notice will be sent to the family's address of record as well as to any alternate address or email address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family that they have 10 calendar days from the date of the written correspondence to request an informal review of the Department's decision (see Chapter 16) [24 CFR 982.201(f)].

The correspondence will indicate that their name will be removed from the waiting list if they fail to respond within the period specified. The applicant may reapply if the waiting list is open. If the waiting list is closed, the applicant will have to wait to reapply. See Applying for Assistance earlier in this section.

The Department's system of removing applicants' names from the waiting list WILL NOT violate the rights of a disabled person(s). If an applicant's failure to respond to a request from the Department for information or updates was caused by the applicant's disability, the Department will provide reasonable accommodations and give the applicant an opportunity to respond. An example of a reasonable accommodation would be to allow an applicant to be reinstated on the waiting list based on the original date and time of their application, if the applicant indicates that they did not respond due to a disability. If the disability is not apparent, the Department may request the applicant to have a doctor submit a written statement indicating that the applicant did not respond due to their disability.

#### *Reporting Changes in Household Circumstances While On the Waiting List*

While a household is on the waiting list, the household must immediately inform the Department of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing. Failure to provide this information may prevent the Department from being able to reach a household if a voucher becomes available and may result in removal from the waiting list.

## **PART III: SELECTION FOR HCV ASSISTANCE**

### **OVERVIEW**

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

TDHCA maintains a clear record of all information required to verify that the family is selected from the waiting list according to the these selection policies [24 CFR §982.204(b) and §982.207(e)].

### **SELECTION AND HCV FUNDING SOURCES**

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

If HUD awards the Department program funding that is targeted for a specified category or certain units, the Department will use the assistance for the families living in the specified units. The Department may admit a family that is not on the Department's waiting list, or without considering the family's waiting list position for:

- a. Any other family required to be housed at the direction of HUD, as directed by a court of law, or part of a TDHCA conciliation agreement; or.
- b. Persons with disabilities transitioning out of institutions or otherwise segregated setting or at risk of institutionalization. (Project Access, Mainstream).

The Department will maintain records showing that the family was admitted with HUD-targeted assistance.

#### *Regular HCV Funding*

Regular HCV funding may be used to assist any eligible family on the waiting list. The Department will use this funding only to assist the families within the specified category. In order to assist families within a targeted funding category, the Department may skip families that do not qualify within the targeted funding category. Families are selected from the waiting list according to the policies provided in Section 4-III.C.

The Department will use the following types of targeted funding for special purpose vouchers:

- Mainstream HCV vouchers
- Project Access
- Non-Elderly vouchers
- HUD-VASH

### **SELECTION METHOD**

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

The Department will first issue specialty vouchers until the Department has assisted the required number of special purpose vouchers. The Department will then issue non-specialty vouchers to those on the geographic waiting lists.

#### *Project Access, Non-Elderly Disabled, and Mainstream Program vouchers (targeted funding) waiting list policy:*

For the issuance of Non-Elderly Disabled (NED), Project Access, or Mainstream vouchers, only applicants certified eligible for those programs will be issued a voucher. To be an eligible applicant for these vouchers the

Department must have received both a completed application and a completed referral from the Texas Health and Human Services Commission.

Until both documents are received, the application will not be considered an eligible application. The applicant will only be placed on the waiting list once both documents have been received and deemed eligible. Therefore, NED, Project Access, or Mainstream eligible applicants are granted a preference over all other applicants not eligible for these vouchers. Applicants certified eligible for the NED, Project Access, or Mainstream vouchers will be coded as such on the Department's waiting list. This preference will be granted by TDHCA only for the issuance of NED, Project Access, or Mainstream vouchers and not for any other vouchers.

If NED or Project Access vouchers are not available, NED or Project Access eligible families will maintain their original place on the waiting list for the issuance of non-NED regular tenant-based vouchers. All families granted a NED, Project Access, or Mainstream preference will be prioritized based on date and time of being certified eligible and any other applicable preferences..

#### *Identifying NED, Project Access, or Mainstream eligible families currently on the Department's HCV Waiting List*

1. Upon receipt of a referral from Texas DADS or through a referral agency, for a NED, Project Access, or Mainstream voucher, the Department will compare the applicant's names with those of families already on the Department's HCV waiting list. Any referred family already on the HCV waiting list will be denoted for a preference for a specialty voucher, and will be coded as NED, Project Access, or Mainstream. For issuance of non-specialty vouchers, these applicants will be assisted in order of their original position on the Department's HCV waiting list in accordance with Department's admissions policies.
2. (b.) If a family coded as NED, Project Access, or Mainstream fails to meet the criteria for preference eligibility before the family has moved into an assisted unit the Department will remove the NED, Project Access, or Mainstream designation from the applicant, but they will remain on the non-specialty voucher waiting list..

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

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during TDHCA's fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, TDHCA will monitor progress throughout the year and TDHCA may skip non-ELI families on the waiting list in order to select an ELI family to ensure the income-targeting requirement is met.

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

#### *Order of Selection*

When a HCV is available, the Department will select the family at the top of the waiting list. The order of admission from the waiting list IS NOT based on family size, or on the family unit size for which the family qualifies for under the occupancy guidelines. If the Department does not have sufficient funds to subsidize the family unit size of the family at the top of the waiting list, the Department WILL NOT skip the top family to admit an applicant with a smaller family unit size. Instead, the family at the top of the waiting list will be admitted when sufficient funds are available. [24 CFR §982.204(d) and (e)].

However, provisions regarding Income Targeting/Deconcentration contained within this policy, shall

supersede the selection of applicants based on date and time, and allow the Department to skip families on the waiting list to accomplish this goal.

### ***NOTIFICATION OF SELECTION***

The Department will notify the family by mail, and email if one has been provided, when it is selected from the waiting list. The notice will inform the family of the following:

- The need for them to complete the full Application and a Personal Declaration Form;
- The Department's contact information (name, phone number and address) in order to set up the initial interview;
- Who is required to attend the interview;
- Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation;
- Occupancy Rights under VAWA utilizing Form 5380; and
- Other documents and information that should be brought to the interview.

If a notification letter is returned to the Department with no forwarding address, the family will be removed from the waiting list. A notice of denial (see Chapter 3) will be sent to the family's address of record, as well as to any known alternate address. A household that does not respond to the request for full application more than three times will be sent a notice consistent with program policies removing them from the waiting list.

### ***THE APPLICATION INTERVIEW***

Families selected from the waiting list are required to participate in an eligibility interview for TDHCA to obtain the information and documentation needed to make an eligibility determination. Being invited to attend an interview does not constitute admission to the program. Reasonable accommodation will be made for persons with disabilities who are unable to attend an interview due to their disability.

The head of household and the spouse/co-head will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/co-head may attend the interview on behalf of the family. Interviews may be hosted remotely. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to the Department. For this reason all family members who are 18 or over or **strongly** encouraged to attend the interview.

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

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures, and submitting required documentation. If any materials are missing, the Department will provide the family with a written list of items that must be submitted.

Any required documents or information that the family is unable to provide at the interview must be provided within fourteen calendar days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of Social Security numbers and eligible non-citizen status). If the family is unable to obtain the information or materials within the required period, the family may request an

extension. If the required documents and information are not provided within the required period (plus any extensions) to the Department, the family will be sent a notice of denial (See Chapter 3) for housing assistance.

An advocate, interpreter, or other assistant may assist the family with the application and the interview process. Where an advocate, interpreter or other third party is used to assist the family, the family and the Department will execute a certification attesting to the role and assistance of the third-party.

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

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

### ***COMPLETING THE APPLICATION PROCESS***

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

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

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

# CHAPTER 5: BRIEFINGS AND VOUCHER ISSUANCE

## INTRODUCTION

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

This chapter describes HUD regulations and PHA policies related to these topics in two parts:

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

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

## PART I: BRIEFINGS AND FAMILY OBLIGATIONS

### ***BRIEFING [24 CFR 982.301]***

TDHCA will give the family an oral briefing and provide the family with a briefing packet containing written information about the program. The briefing provides a broad description of owner and family responsibilities, explains TDHCA's procedures, and includes instructions on how to lease a unit. Families may be briefed individually or in groups; the briefing may be in person or via other telecommunication. At the briefing, TDHCA will ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973), and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

Generally, the head of household is required to attend the briefing. If the head of household is unable to attend, the Department may approve another adult family member such as the co-head to attend the briefing.

Families that attend group briefings and still need individual assistance will receive further guidance/instruction from the Department.

Briefings will be conducted in English. However, for Limited English Proficient (LEP) applicants, TDHCA will provide translation services in accordance with TDHCA's LEP plan (See Chapter 2) or provide an individual meeting.

### *Notification and Attendance*

Families will be notified of their eligibility for assistance at the time they are invited to attend a briefing. The notice will identify who is required to attend the briefing, as well as the location, date and time of the scheduled briefing.

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

Failure to attend a scheduled briefing (without notice to the Department) will result in the family's application being placed in an inactive status and the family may be required to reapply for assistance. Applicants who provide prior notice of an inability to attend a briefing will be scheduled for the next briefing. The Department will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without Department approval, will be denied assistance (see Chapter 3) and will be removed from the waiting list.

Failure of an applicant, without good cause, to participate in a scheduled briefing shall result in withdrawal of his/her application. The applicant will be notified of such withdrawal and determination of ineligibility and of his/her right to an informal review (see Chapter 16).

### *Oral Briefing [24 CFR §982.301(a)]*

Each briefing will provide the family with information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family may be able to lease a unit, including renting a unit inside or outside TDHCA's jurisdiction;
- An explanation of portability for families regardless of their eligibility to utilize that option including a list of portability contact persons for neighboring PHAs including names, addresses, and telephone numbers. TDHCA cannot discourage eligible families from moving under portability and must explain to a family who elects to move under portability how different practices at receiving PHA's may affect their assistance (PIH Notice 2016-9)
- For families living in high-poverty census tracts, an explanation of the advantages of moving to areas outside of high-poverty concentrations; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

### *Briefing Packet [24 CFR §982.301(b)]*

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

- The term of the voucher, and TDHCA's policies on any extensions or suspensions of the term. If TDHCA allows extensions, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how TDHCA determines the payment standard for a family, how TDHCA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how TDHCA determines the maximum allowable rent for an assisted unit.
- What the family may want to consider in deciding whether to lease a unit, including:

- The condition of the unit,
  - Whether the rent is reasonable,
  - The cost of any tenant-paid utilities and whether the unit is energy-efficient, and
  - The location of the unit, including proximity to public transportation (if applicable), centers of employment, well rated schools and shopping, proximity to or availability of any needed supportive services and transportation, or other indicators of high opportunity areas.
- Where the family may lease a unit. For a family that qualifies to lease a unit outside TDHCA jurisdiction under portability procedures, the information must include an explanation of how portability works.
  - The HUD-required tenancy addendum, which must be included in the lease.
  - The form the family must use to request approval of tenancy and a description of the procedure for requesting approval for a tenancy.
  - A statement of TDHCA policy on providing information about families to prospective owners.
  - TDHCA subsidy standards including when and how exceptions are made.
  - The HUD brochure on how to select a unit.
  - The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home*.
  - Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.
  - A list of landlords, resources and/or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.
  - An explanation of the advantages of moving to an area with lower levels of poverty and maps specific to the family's county(ies) of interest showing areas with housing opportunities outside areas of poverty or minority concentration, both within its jurisdiction and its neighboring jurisdiction. The map also shows median family income, median rents, school performance ratings, and TDHCA multifamily properties.
  - Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to TDHCA.
  - Notice of how to request a reasonable accommodation for person with disabilities needing a change, adjustment or exception to a policy or practice to make the program more accessible.
  - The family obligations under the program, including any obligations of a welfare-to-work family.
  - The grounds on which TDHCA may terminate assistance for a participant family because of family action or failure to act.
  - PHA informal hearing procedures including when TDHCA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.
  - Information on how to fill out and file a housing discrimination complaint form.
  - The publication *Are You A Victim of Housing Discrimination? (HUD-903.1)* that explains the types of actions a family must avoid and the penalties for program abuse.

## **FAMILY OBLIGATIONS**

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

### *Time Frames for Reporting Changes Required By Family Obligations*

Unless otherwise noted below, when family obligations require the family to respond to a request or notify the Department of a change of the request or change within fourteen calendar days is considered prompt notice. When a family is required to provide notice to the Department, the notice must be in writing.

### *Family Obligations [24 CFR §982.551]*

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

- The family must supply any information that TDHCA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by TDHCA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.
- Damages beyond normal wear and tear will be considered to be damages that could be assessed against the security deposit. If the cost to repair damages beyond normal wear and tear exceeds the security deposit amount paid by the HCV participant, the owner must notify the Department and provide proper documentation of costs. Once the Department reviews the documentation and determines that excessive damages have occurred, the Department may decide to not allow the HCV participant to move until damages are paid. The Department may also terminate the HCV participant's assistance, or try to facilitate a repayment agreement between the owner and HCV participant. The family must allow TDHCA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease. The Department will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict. Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.
- The family must notify TDHCA and the owner before moving out of the unit or terminating the lease. The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to the Department at the same time the owner is notified.

- The family must promptly give TDHCA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- TDHCA will approve the composition of the assisted family residing in the unit. The family must promptly notify TDHCA in writing of the birth, adoption, foster child/adult long-term placement, marriage, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit. The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The Department will determine eligibility of the new member in accordance with the policies in Chapter 3. Once an applicant becomes a participant in Department's tenant-based program, the head of household must request permission in writing to add another person to the program prior to them moving into the unit. The Department will also be notified in writing of the birth, adoption or court-awarded custody of a child. The Department will determine eligibility of the new member in accordance with the policies in Chapter 3.
- The family must promptly notify TDHCA in writing if any family member no longer lives in the unit. If TDHCA has given approval, a live-in aide may reside in the unit. TDHCA has the discretion to adopt reasonable policies concerning residency by a live-in aide, and to define when PHA consent may be given or denied. For policies related to the request and approval/disapproval of live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
- The family must supply any information requested by TDHCA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify TDHCA when the family is absent from the unit. See Chapter 3, Section I.L for Absent Family Members Policy.
- The family must pay utility bills, and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and PHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless TDHCA has determined (and has notified the owner and the family of such determination) that approving rental of the unit,

notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

## **PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE**

### ***OVERVIEW***

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

### ***DETERMINING FAMILY UNIT (VOUCHER) SIZE [24 CFR §982.402]***

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

The following requirements apply when TDHCA determines family unit size:

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

The Department will assign one bedroom for each two persons within the household, except in the following circumstances:

- Persons of the opposite sex (other than spouses, and children under age 5) will be allocated separate bedrooms.
- Live-in aides will be allocated a separate bedroom.
- Single person families will be allocated one bedroom.

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

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

**For example:** For any other person in the household TDHCA shall issue 2 persons per bedroom. Opposite sex (except the head/spouse or co-head) shall receive separate bedrooms for children over the age of 5 or the same sex for persons of different generations.

***EXCEPTIONS TO SUBSIDY STANDARDS***

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

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

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

Any request for an exception to the subsidy standards must be made to the Department. The request must explain the need or justification for a larger family unit size, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source, unless the disability and the disability–related request for accommodation is readily apparent or otherwise known. Once the request is received and reviewed for proper documentation by the Department, the Department will notify the family of its determination within fourteen calendar days of receiving the family’s request. If a participant family’s request is denied, the notice will inform the family of their right to request an informal hearing.

***VOUCHER ISSUANCE [24 CFR §982.302]***

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, TDHCA issues a Housing Choice Voucher, form HUD-52646. This chapter deals only with voucher issuance for applicants. For voucher issuance associated with moves of program participants, please refer to Chapter 10. Vouchers will be issued to eligible applicants immediately following the mandatory briefing. [HCV 8-1].

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

A voucher can be issued to an applicant family only after TDHCA has determined that the family is eligible for the program based on information received within the 60 days prior to issuance [24 CFR §982.201(e)]. If TDHCA determines that there is insufficient funding after a voucher has been issued, TDHCA may rescind the voucher and place the affected family back on the waiting list.

### ***VOUCHER TERM, EXTENSIONS, AND SUSPENSIONS***

#### *Voucher Term [24 CFR §982.303]*

The initial term of a voucher will be 60 calendar days. The initial term will be stated on the voucher [24 CFR 982.303(a)]. While 60 days is the minimum initial term, TDHCA may establish a longer term as necessary based on local housing market conditions and to allow households time to locate a unit. An extension will be reviewed on a case basis, not to exceed 120 days. The family must submit a Request for Tenancy Approval (RTA) and proposed lease within the 60-day period unless the Department grants an extension.

For the HUD-VASH program, Veterans have a maximum of 120 days. The family must submit a Request for Tenancy Approval (RTA) and proposed lease within the 120-day period unless the Department grants an extension.

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

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

All requests for extensions should be received prior to the expiration date of the Voucher. Extensions are permissible at the discretion of the Department primarily for the following reasons:

- Extenuating circumstances such as hospitalization or a family emergency for an extended period of time that has affected the family's ability to find a unit within the initial 60-day time period. The Department will verify the extenuating circumstances prior to the Department granting an extension;
- The family has evidence that they have made a consistent effort to locate a unit throughout the initial 60-day period with regard to their inability to locate a unit;
- The family has turned in a RTA prior to the expiration of the 60-day time period, but the unit has not passed HQS;
- Time Period for Extensions: The Program Manager may grant one or more extensions, not to exceed a total of 60 days. The initial term plus any extensions **MAY NOT exceed 120 calendar days** for the beginning of the initial term, except that the Department will approve an extension of up to 150 days if needed as a reasonable accommodation for persons with disabilities to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose.

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

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

TDHCA has the option to suspend or toll the housing choice voucher term if the family has submitted a Request for Tenancy Approval (RTA) during the voucher term - when the Department receives a RTA and proposed lease, the term of the voucher is suspended/ tolled. "Suspend/ Toll" means stopping the clock on a family's voucher term from the time a family submits the RTA until the time TDHCA approves or denies the request [24 CFR §982.4]. TDHCA's determination not to suspend a voucher term is not subject to informal review [24 CFR §982.554(c)(4)].

*Expiration of Voucher Term*

A family does not become ineligible for the program because it was unable to locate a unit before the voucher expired [HCV GB p. 8-13]. If an applicant family's voucher term or extension expires before the Department has approved a RTA, the Department will place the family back on the waiting list with a new application date without requiring the family to reapply for assistance.

Within fourteen calendar days after the expiration of the voucher term or any extension, the Department will notify the family in writing that the voucher term has expired and that the family will be placed back on the waiting list with a new application date.

# Chapter 6: INCOME AND SUBSIDY DETERMINATIONS

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

## INTRODUCTION

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

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

## PART I: ANNUAL INCOME

### OVERVIEW

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

§5.609 Annual income.

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

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

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

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

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

*Annual Income* is defined as the gross amount of income anticipated to be received by the family during the 12 months after certification or recertification. Gross income is the amount of income prior to any HUD allowable expenses or deductions, and does not include income that has been excluded by HUD. Annual income is used to determine whether or not applicants are within the applicable income limits.

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

- Annual Income Inclusions (Exhibit 6-1)
- Annual Income Exclusions (Exhibit 6-2)
- Treatment of Family Assets (Exhibit 6-3)
- Earned Income Disallowance for Persons with Disabilities (Exhibit 6-4)

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

**HOUSEHOLD COMPOSITION AND INCOME**

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

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

\* Chapter 3 provides more detail

*Temporarily Absent Family Members [24 CFR §5.609(a) (1); § 982.551]*

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV Guide Book, p. 5-18]. Generally an individual who is or is expected to be absent from the assisted unit for 90 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 90 consecutive days is considered permanently absent and no longer a family member. Exceptions

to this general policy are discussed below. Under no circumstances can the entire family be absent from the unit for more than 90 calendar days. (§982.312)

#### *Absent Students*

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

Full time students who attend school away from the home will be treated in the following manner: A student (other than head of household or spouse) who attends school away from home but lives with the family during school recesses may, at the family's choice, be considered either temporarily or permanently absent. If the family decides that the member is permanently absent, income of that member will not be included in total household income, the member will not be included on the lease, and the member will not be included for determination of Voucher size.

#### *Absences Due to Placement in Foster Care*

Children temporarily absent from the home because of placement in foster care are considered members of the family [24 CFR §5.403]. If a child has been placed in foster care, the Department will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member. 'Permanently removed' is defined as more than 365 days.

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

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

#### *Family Members Permanently Confined for Medical Reasons*

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

The Department will request verification from a responsible medical professional and will use this determination in making a decision. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent.

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

#### *Absent Due to Incarceration*

If the sole member is incarcerated for more than 45 consecutive days, s/he will be considered permanently absent. Any member of the household, other than the sole member, will be considered permanently absent if s/he is incarcerated for 45 consecutive days. The Department will determine if the reason for incarceration is for drug-related or violent criminal activity and, if so, will terminate assistance to the family (see Chapter 12: Denial and Termination of Assistance.)

#### *Joint Custody of Dependents*

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

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents.

If there is a dispute about which family should claim them, the Department will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

#### *Caretakers for a Child*

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

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

#### **ANTICIPATING ANNUAL INCOME**

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

#### *Basis of Annual Income Projection*

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

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

When the Department cannot readily anticipate income based upon current circumstances (*e.g.*, in the case of seasonal employment, unstable working hours, or suspected fraud), the Department will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income. Anytime current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the Department to show why the historic pattern does not represent the family's anticipated income.

### *Known Changes in Income*

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

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

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases, the Department will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if the Department's policy in Chapter 11 does not require interim reexaminations for other types of changes.

### *Seasonal Changes in Income*

If the Department is verifying school, seasonal or contractual employment, annual income must be calculated by applying the income amount by the appropriate months employed. Families should pay their portion of rent based on the anticipated income for 12 months.

Therefore, their portion of rent will be a little less during the working months than it would normally be, but they must prepare for the same portion of rent when their seasonal income stops. This is especially geared towards school employees who work 9 or 10 months a year, but could also be used for other seasonal employment.

The Department will retain detailed notes in its system of record, HAPPY HousingPro, under the "New Note" screen relating to this calculation.

**Example 1:** A family reports that as a school bus driver the individual is employed 9 months throughout the year. Their salary monthly is \$1,300 per month. The Department would calculate annual income as follows:  $(\$1,300 \times 9 \text{ monthly}) = \$11,700$ .

### *Using Enterprise Income Verification (EIV) to Project Income*

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

The EIV (Enterprise Income Verification) web-based system provides PHA's income information that is derived from SSA (Social Security Administration) and HHS (Health and Human Services) for all program participants, Using PII (Personal Identifying Information) including name, date of birth and social security number as reported on the HUD-50058. TDHCA can access employment, wage, unemployment compensation, and social security benefit information (Notice PIH 2017-12)

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

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

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

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

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

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

- The Department will request written third-party verification from the discrepant income source in accordance with 24 CFR §5.236(b)(3)(i).
- When the Department cannot readily anticipate income (e.g., in cases of seasonal employment, unstable working hours, or suspected fraud), the Department will review historical income data for patterns of employment, paid benefits, and receipt of other income.
- The Department will analyze all EIV, third party, and family-provided data and attempt to resolve the income discrepancy.
- The Department will use the most current verified income data and, if appropriate, historical income data to calculate anticipated annual income.

#### *Use of Historical Income Data*

When a PHA cannot readily anticipate income (e.g., in cases of seasonal employment, unstable working hours, or suspected fraud), TDHCA will review historical income data for patterns of employment, paid benefits, and receipt of other income.

#### **ZERO INCOME INTERIMS**

There is no minimum income requirement.

Families who report zero income are required to complete a written certification every 90 calendar days that will be verified with all federal, state and local agencies and other sources, as appropriate, including credit checks, to verify income sources, and an interim will be submitted to MTCS.

Families that report zero income will be required to provide information regarding their means of basic subsistence, such as food, utilities, transportation, and other subsistence of expenses in writing. TDHCA will require a printout of utility bills for the past 12 months to be submitted at interim evaluations for participants claiming zero income.

The average for the last three months of utility bill payments over the amount of the family's Utility Reimbursement Payment, will be averaged, annualized and the results analyzed to determine the possibility of un-reported or under-reported income and shall be counted as income.

When the amounts indicate that the family has received monies from outside sources, or that an outside source has paid the family's bills on their behalf, TDHCA will call the family into an interview to discuss how the family has made the payments.

When it is discovered that an outside source has provided money to the family, or has paid the bills on the family's behalf, TDHCA will send third party verification to the providing party to determine whether the income

is sporadic or recurring in order to determine whether the amount is to be included in the family's annual income.

TDHCA will also verify no other income has been received via third party verification at the 90 calendar day interim examinations being sent to such agencies as the unemployment department, welfare, and child support, and will perform credit checks to identify reoccurring payments.

If the family's expenses exceed their known income, TDHCA will make inquiry of the head of household as to the nature of the family's resources and terminate the family for fraud, or offer a repayment agreement when documented evidence indicates the family has unreported income, which includes receiving funds from other parties or individuals that has not been reported. Failure to enter into a repayment agreement and pay the required 25% within the established guidelines shall result in the termination of the subsidy.

## **EARNED INCOME**

### ***Types of Earned Income Included in Annual Income***

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

For persons who regularly receive bonuses or commissions, the Department will verify and then average amounts received for the prior three months preceding admission or reexamination. The family may provide, and the Department will consider, a credible justification for not using this history to anticipate future bonuses or commissions.

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

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

#### *Temporary, Nonrecurring, or Sporadic Income [24 CFR §5.609(c)(9)]*

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

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

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

#### *Income of Person Permanently Confined to Nursing Home [24 CFR §982.54(d) (10)]*

If a family member is permanently confined to a hospital or nursing home and there is a family member left in the household, TDHCA will calculate the income by using the following methodology and use the income figure that would result in a lower payment by the family:

Exclude the income of the person permanently confined to the nursing home and give the family no deductions for medical expenses of the confined family member after 180 days or when doctor certification of length of absence is received, whichever comes first.

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

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

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. §§5044(g), 5058)
- Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. §1552(b))
- Awards under the federal work-study program (20 U.S.C. §1087uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. §3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. §12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. §2931)
- Income exclusions listed in Section 8 Guidebook and its updated chapters, as applicable

*Resident Service Stipend.* Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for TDHCA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of TDHCA's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR §5.600(c)(8)(iv)].

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

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

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

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

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

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

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

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

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

#### ***EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR §5.617 and 24 CFR §960.255]***

The earned income disallowance (EID) also known as Earned Income Disregard encourages people with disabilities to enter the work force by not including the full value of increases in earned income for a straight period of time. The Department will administer the requirement in accordance with 24 CFR §5.617 and which can be viewed in full in PIH Notice 2016-05, Attachment E.

#### ***Eligibility***

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

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

### *Calculation of the Disallowance*

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

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

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

#### *Initial 12-Month Exclusion.*

During the initial 12-month exclusion period, the full amount (100%) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are consecutive and even if there is a break in employment, the 100% disallowance of that increased earned income ends after 12 calendar months.

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

#### *Second 12-Month Exclusion and Phase-In.*

During the second 12-month exclusion period, the exclusion is reduced to 50% of any increase in income attributable to employment or increased earnings. The 50% disregard is effective after the initial 12 month period expires regardless of employment status. The second 12 months continue at the 50% disregard but end after 12 calendar months and the lifetime maximum of 24 months is achieved.

#### *Lifetime Limitation.*

The EID has a consecutive 24 month maximum. The eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there will be not breaks in employment. At the end of the 24 months, the EID ends regardless of how many months were "used."

During the 24 month eligibility period, the Department will schedule and conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (*e.g.*, when the family member's income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

### ***BUSINESS INCOME [24 CFR §5.609(b)(2)]***

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

#### *Business Expenses*

Net income is "gross income less business expense" [HCV GB, p. 5-19]. To determine business expenses that may be deducted from gross income, the Department will use current applicable Internal Revenue Service (IRS) rules

for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

#### *Business Expansion*

HUD regulations do not permit TDHCA to deduct from gross income expenses for business expansion. *Business expansion* is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

#### *Capital Indebtedness*

HUD regulations do not permit TDHCA to deduct from gross income the amortization of capital indebtedness. *Capital indebtedness* is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means the Department will allow as a business expense interest, but not principal, paid on capital indebtedness.

#### *Negative Business Income*

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

#### *Withdrawal of Cash or Assets from a Business*

HUD regulations require TDHCA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family. Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of an assisted family provided an up-front loan of \$2,000 to help a business get started, the Department will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

#### *Co-owned Businesses*

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

### ***ASSETS [24 CFR §5.609(b)(3) and 24 CFR §5.603(b)]***

#### *Overview*

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

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

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)], and Exhibit 6-4 provides the regulatory definition of *net family assets* as well as a chart from the *HCV Guidebook* that summarizes asset inclusions and exclusions. This section begins with a discussion of general policies related to assets and then provides HUD rules and PHA policies related to each type of asset.

### *Income from Assets*

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

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

### *Valuing Assets*

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

- The market value of an asset is its worth (*e.g.*, the amount a buyer would pay for real estate or the balance in an investment account).
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash. Examples of acceptable costs include penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28].

### *Lump-Sum Receipts*

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

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

When family assets are equal to or less than \$5,000, TDHCA will 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 once every three years except for at initial income determination. TDHCA will accept the family's personal declaration as a self-certification at the time of the annual renewals; all family members 18 years of age and older must sign the family's declaration of total assets. If the family has assets in excess of \$5000, TDHCA will obtain supporting documentation (*e.g.* bank statements) from the family to confirm the assets. Any assets will continue to be reported on HUD Form 50058.

### *Determining Actual Anticipated Income from Assets*

It may or may not be necessary for TDHCA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value

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

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

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

#### *Jointly Owned Assets*

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

If more than one person owns an asset and any family member has unrestricted access to the asset, the Department will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.

If more than one person, including a family member, owns an asset but the family member does not have unrestricted access to the asset, the Department will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the Department will prorate the asset evenly among all owners.

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

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

#### *Minimum Threshold*

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

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

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

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

#### *Separation or Divorce*

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

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

#### *Foreclosure or Bankruptcy*

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

#### *Family Declaration*

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

#### **Types of Assets**

##### *Checking and Savings Accounts*

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

- In determining the value of a checking account, the Department will use the average monthly balance for the last six months.
- In determining the value of a savings account, the Department will use the current balance.
- In determining the anticipated income from an interest bearing checking or savings account, the Department will multiply the value of the account by the current rate of interest paid on the account.

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

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

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

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

##### *Equity in Real Property or Other Capital Investments*

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

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

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

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

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

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

### *Trusts*

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

#### *Revocable Trusts*

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

#### *Non-revocable Trusts*

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

### **Retirement Accounts**

#### *Company Retirement/Pension Accounts*

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

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

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

#### *IRA, Keogh, and Similar Retirement Savings Accounts*

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

#### *Personal Property*

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

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

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

Necessary items of personal property are not considered assets [24 CFR 5.603(b)]. Necessary personal property consists of items such as clothing, furniture, household furnishings, jewelry that is not held as an investment, and vehicles, including those specially equipped for persons with disabilities.

#### *Life Insurance*

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

### **PERIODIC PAYMENTS**

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

#### *Periodic Payments Included in Annual Income*

- Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR §.609(b)(4) and (b)(3)].
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR §5.609(b)(4) and HCV, p. 5-14]

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

Most lump sums received because of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [24 CFR §5.609(b)(4)].

When a delayed-start payment is received, the family must report the change within fourteen calendar days to the Department staff. The Department will then assess the family situation and determines whether to adjust the family share and Department subsidy. If the determination requires the family to make retroactive payments for the period the payment was intended to cover, the family may (1) pay in full any amount due or (2) request to enter into a repayment agreement with the Department.

See Chapter 11 for information about a family's obligation to report lump-sum receipts between annual reexaminations.

See Chapter 16 for policies related to repayment agreements.

### *Periodic Payments Excluded from Annual Income*

Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR §5.609(c)(2)] The Department will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

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

### **PAYMENTS IN LIEU OF EARNINGS**

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR §5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR §5.609(c) (3)]. (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

## **WELFARE ASSISTANCE**

### *Overview*

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR §5.603(b)].

### *Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR §5.615]*

TDHCA will make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR §5.615 is provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

### *Covered Families*

The families covered by 24 CFR §5.615 are those “who receive welfare assistance or other public assistance benefits (‘welfare benefits’) from a State or other public agency (‘welfare agency’) under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

### *Imputed Income*

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, TDHCA will include in annual income “imputed” welfare income. TDHCA will request that the welfare agency inform TDHCA when the benefits of an HCV participant family are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

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

### *Offsets*

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

## **PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR §5.609(b)(7)]**

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

### *Alimony and Child Support*

TDHCA will count alimony or child support amounts awarded as part of a divorce or separation agreement.

The Department will count court-awarded amounts for alimony and child support unless the Department verifies that (1) the payments are not being made and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

#### *Regular Contributions or Gifts*

TDHCA will count as income regular monetary and nonmonetary contributions or gifts from persons not residing with an assisted family [24 CFR §5.609(b) (7)]. Contribution or gifts received every two months or more frequently will be considered a “regular” contribution. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR §5.609(c) (9)].

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

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

#### **ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME**

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

- Reimbursement of medical expenses [24 CFR §5.609(c)(4)]
- The amount of student financial assistance paid directly to the student or to the educational institution [24 CFR §5.609(c)(6)] In the case where a student is under the age of 23, without dependent children, financial assistance in excess of tuition and fees will be counted as income unless it is derived from a loan.
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR §5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR §5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR §5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR §5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR §5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR §5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR §5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:

- a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. §2017 (b))
- b. Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. §§5044(g), 5058)
- c. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. §1626(c))
- d. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. §459e)
- e. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. §8624(f))
- f. Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. §1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. §2931).)
- g. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
- h. The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. §§1407-1408)
- i. Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. §1087uu)
- j. Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. §3056(f))
- k. Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *Re Agent-product liability litigation*, M.D.L. No. 381 (E.D.N.Y.)
- l. Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. §1721)
- m. The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. §9858q)
- n. Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. §32(j))
- o. Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- p. Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. §12637(d))
- q. Any allowance paid under the provisions of 38 U.S.C. §1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. §1805)
- r. Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under

the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. §10602)

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

## **PART II: ADJUSTED INCOME**

### ***INTRODUCTION***

#### *Overview*

HUD regulations require PHAs to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR §5.611.

§5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity [PHA] must deduct the following amounts from annual income:

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

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

#### *Anticipating Expenses*

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

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

**DEPENDENT DEDUCTION**

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

**ELDERLY OR DISABLED FAMILY DEDUCTION**

A single deduction of \$400 is taken for any elderly or disabled family [24 CFR §5.611(a)(2)]. An *elderly family* is a family whose head, spouse, Co-head, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, Co-head, or sole member is a person with disabilities [24 CFR §5.403].

**MEDICAL EXPENSES DEDUCTION [24 CFR §5.611(a)(3)(i)]**

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed 3% of annual income.

The medical expense deduction is permitted only for families in which the head, spouse, or Co-head is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

*Definition of Medical Expenses 24 CFR §5.603(b)*

HUD regulations define *medical expenses* to those necessary medical expenses, including medical insurance premiums that are anticipated during the period for which annual income is computed, and that are not covered by insurance. Medical expenses, in excess of 3% of annual income, are deductible from income by elderly and disabled households only. The most current IRS Publication 502, *Medical and Dental Expenses*, will be used to determine the costs that qualify as medical expenses.

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

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

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

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

### ***DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(b) and 24 CFR §5.611(a)(3)(ii)]***

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

### *Earned Income Limit on the Disability Assistance Expense Deduction [24 CFR §5.603(b)].*

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

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

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

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

### *Eligible Disability Expenses*

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

### *Eligible Auxiliary Apparatus*

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

### *Eligible Attendant Care*

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

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

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

If the care attendant also provides other services to the family, the Department will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

#### *Payments to Family Members [24 CFR §5.603(b)]*

No disability assistance expenses may be deducted for payments to a member of an assisted family. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

#### *Necessary and Reasonable Expenses*

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

The Department determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the Department will request that the family collect information from organizations that provide services and support to persons with disabilities. Once the family collects and submits the information, the Department will consider the family's justification for costs that exceed typical costs in the area.

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

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

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

#### **CHILD CARE EXPENSE DEDUCTION**

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

shall reflect reasonable charges for childcare. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

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

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

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

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

In evaluating the family’s request, the Department will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

#### *Seeking Work*

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

#### *Furthering Education*

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

#### *Being Gainfully Employed*

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

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

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

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

When the person who is enabled to work is a person with disabilities who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, childcare costs related to enabling a family member to work may not exceed the portion of the person’s earned income that actually is

included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID, only \$5,000 is included in annual income, childcare expenses are limited to \$5,000.

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

When the childcare expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, the Department generally will limit allowable childcare expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

#### *Eligible Childcare Expenses*

The type of care to be provided is determined by the assisted family. TDHCA may not refuse to give a family the childcare expense deduction because there is an adult family member in the household that may be available to provide childcare [VG, p. 26].

#### *Allowable Child Care Activities*

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

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

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

#### *Necessary and Reasonable Costs*

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

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

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

## **PART III: CALCULATING FAMILY SHARE AND PHA SUBSIDY**

### ***OVERVIEW OF RENT AND SUBSIDY CALCULATIONS***

#### *TTP Formula [24 CFR §5.628]*

HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30% of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10% of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by TDHCA

TDHCA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

#### *Welfare Rent [24 CFR §5.628]*

Welfare rent does not apply.

#### *Minimum Rent [24 CFR §5.630]*

The minimum rent for all Department localities is \$25.00 per month.

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

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds TDHCA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy TDHCA may not approve the tenancy if it would require the family share to exceed 40% of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.)

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

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

#### *Utility Reimbursement Payment [24 CFR §§960.253, 982.514(b)]*

When TDHCA subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. HUD permits TDHCA to pay the reimbursement to the family or directly to the utility provider. PHAs may make reimbursement payments monthly, retroactively or prospectively. A PHA that adopts any of these provisions, and chooses to make reimbursement payments retroactively, must permit a family to request a hardship exemption, in accordance with 24 CFR 5.630(b)(2). If a family receives a hardship exemption, then TDHCA may

either reimburse the family on a monthly basis or it may make prospective payments to the family, on a quarterly basis.

The Department elects to make utility reimbursements (retroactively) to the family on a monthly basis. A family may make a hardship exemption as noted above.

### ***FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR §5.630]***

#### *Overview*

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

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If TDHCA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

#### *HUD-Defined Financial Hardship*

Financial hardship includes the following situations:

1. The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

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

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

2. The family would be evicted because it is unable to pay the minimum rent. For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities.
3. Family income has decreased because of changed family circumstances, including the loss of employment.
4. A death has occurred in the family. In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income).
5. The family has experienced other circumstances determined by TDHCA. The Department has not established any additional hardship criteria but will consider specific hardship situations on a case-by-case basis.

#### ***Implementation of Hardship Exemption***

##### *Determination of Hardship*

When a family requests a financial hardship exemption, TDHCA will suspend the minimum rent requirement beginning the first of the month following the family's request.

TDHCA then determines whether the financial hardship exists and whether the hardship is temporary (expected to last 90 days or less) or long-term.

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

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

To qualify for a hardship exemption, a family must submit a request for a hardship exemption form to the Department prior to the rent becoming delinquent and before the lease is terminated by the Department.

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

*No Financial Hardship*

If TDHCA determines there is no financial hardship, TDHCA will reinstate the minimum rent and require the family to repay the amounts suspended. The Department will require the family to repay the suspended amount within 30 calendar days of the Department’s notice that a hardship exemption has not been granted.

*Temporary Hardship*

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

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

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

If a resident requests a hardship exemption (prior to the rent being delinquent) under this section, and the Department reasonably determines the hardship to be of a temporary nature, exemption shall not be granted during a ninety day period beginning upon the making of the request for the exemption.

A resident may not be evicted during the ninety-day period for non-payment of rent. In such a case, if the

resident thereafter demonstrates that the financial hardship is of a long-term basis, the Department shall retroactively exempt the resident from the applicability of the minimum rent requirement for such ninety-day period. This paragraph does not prohibit the HA from taking eviction action for other violations of the lease.)

#### *Long-Term Hardship*

If TDHCA determines that the financial hardship is long-term, TDHCA will exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

The hardship period ends when any of the following circumstances apply:

1. At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
2. For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until the family receives at least \$60/month in income from another source or once again begins to receive the child support.
3. For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

### ***APPLYING PAYMENT STANDARDS [24 CFR §982.505]***

#### *Overview*

TDHCA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of TDHCA's payment standards. The establishment and revision of TDHCA's payment standard schedule are covered in Chapter 16.

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

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

If TDHCA has established an exception payment standard for a designated part of an FMR area and a family's unit is located in the exception area, TDHCA will use the appropriate payment standard for the exception area.

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

If during the term of the HAP contract for a family's unit, the owner lowers the rent, TDHCA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

#### *Changes in Payment Standards*

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

### *Decreases*

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

**Step 1:** At the first regular reexamination following the decrease in the payment standard, TDHCA will determine the payment standard for the family using the lower of the payment standard for the family unit size or the size of the dwelling unit rented by the family.

**Step 2:** TDHCA will compare the payment standard from step 1 to the payment standard last used to calculate the monthly housing assistance payment for the family. The payment standard used by TDHCA at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. TDHCA will advise the family that the application of the lower payment standard will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard.

**Step 3:** At the second regular reexamination following the decrease in the payment standard, the lower payment standard will be used to calculate the monthly housing assistance payment for the family unless TDHCA has subsequently increased the payment standard, in which case the payment standard will be determined in accordance with procedures for increases in payment standards described below.

### *Increases*

If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for the family beginning on the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard.

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next annual reexamination [HCV GB, p. 7-8].

In the case of Small Area Fair Market Rent's (SAFMR), TDHCA will have no change in policy in how it processes decreases or increases in the payment standard. SAFMR's are intended to provide families access to low-poverty areas by providing rental assistance at a level that makes higher rents affordable (Notice PIH 2018-1). TDHCA implements the required SAFMR's by assigning the payment standards to zip code areas and continuing to use the basic range of 90-110% of the SAFMR (except in the case of Emergency Housing Vouchers discussed in Chapter 19.)

### *Changes in Family Unit Size*

Irrespective of any increase or decrease in the payment standard, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard for the family beginning at the family's first regular reexamination following the change in family unit size.

### *Reasonable Accommodation*

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, TDHCA is allowed to establish a higher payment standard for the family within the basic range.

## **APPLYING UTILITY ALLOWANCES [24 CFR §982.517]**

### *Overview*

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. TDHCA will use the appropriate utility allowance for the size of dwelling unit actually leased by a family rather than the voucher unit size for which the family qualifies using PHA subsidy standards. See Chapter 5 for information on TDHCA's subsidy standards.

Effective July 01, 2014, PHAs must limit the utility allowance payment for tenant-based vouchers to the family unit size for which the voucher is issued, irrespective of the size of the unit rented by the family, with an exemption for families with a person with disabilities.

Therefore, the utility allowance for a family is the lower of the utility allowance amount for the family unit size or the utility allowance amount for the size of the unit rented by the family.

At the request of a family with a person with disabilities, TDHCA will approve a utility allowance higher than the applicable amount if such a higher utility allowance is needed as a reasonable accommodation.

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

### *Reasonable Accommodation*

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on TDHCA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, TDHCA will approve an allowance for air-conditioning, even if TDHCA has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance and provide TDHCA with an explanation of the need for the reasonable accommodation and information about the amount of additional allowance required [HCV GB, p. 18-8].

### *Utility Allowance Revisions*

At reexamination, TDHCA will use TDHCA current utility allowance schedule [24 CFR §982.517(d)(2)]. The Department will review its utility allowance schedule annually, and must revise its allowances at other times when there has been a change of 10% or more in the utility rates or fuel costs since the last revision of the schedule.

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination that is effective after the allowance is put into effect.

TDHCA may implement revised UA schedules on a specified date and time for all households provided the household has been given at least sixty days' notice of the change.

## **PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR §5.520]**

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. TDHCA will prorate the assistance provided to a mixed family. TDHCA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For

example, if TDHCA subsidy for a family is calculated at \$500 and two of four family members are ineligible, TDHCA subsidy would be reduced to \$250.

## EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

### 24 CFR 5.609

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

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

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

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

authorized in paragraph (b) (2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

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

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

(6) Welfare assistance payments.

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

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31<sup>1</sup>; and

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

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

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<sup>1</sup> Text of 45 CFR 260.31 follows.

assistance income to be included as income shall consist of:

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

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

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

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

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

**HHS DEFINITION OF "ASSISTANCE"**

**45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

**260.31 What does the term "assistance" mean?**

(a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing

basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

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

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

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

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

(b) [The definition of "assistance"] excludes: (1) Non-recurrent, short-term benefits that:

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

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

(iii) Will not extend beyond four months.

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

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

(4) Refundable earned income tax credits;

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

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

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

## EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

### 24 CFR 5.609

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

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;  
(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);  
(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program;  
(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for TDHCA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of TDHCA's governing board. No resident may receive more than one such stipend during the same period of time;
- (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) [Reserved]
- (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits
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The following updated list of federally mandated exclusions supersedes the notice published in the Federal Register on December 14, 2012. The following list of program benefits is the comprehensive list of benefits that currently qualify for the income exclusion in either any Federal program or in specific Federal programs (exclusions (viii), (xiii), (xxi), and (xxii) have provisions that apply only to specific HUD programs):

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

(ii) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(f)(1), 5058);

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

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

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

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, section 6);

(vii) The first \$2000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(viii) Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109-115, section 327) (as amended);

(ix) Payments received from programs funded under title V of the Older Americans Act of 1965 (42 U.S.C. 3056g);

(x) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (Pub. L. 101-201) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(xi) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, 25 U.S.C. 1728);

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

(xiii) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(l));

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

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

(xvi) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802–05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811–16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821).

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

(xviii) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

(xix) Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1760(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

(xx) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(xxi) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. § 1437a(b)(4));

(xxii) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.) and administered by the Office of Native American Programs;

(xxiii) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111–291);

(xxiv) Any amounts in an “individual development account” as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107–110, 42 U.S.C. 604(h)(4));

(xxv) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013– 30 “Exclusion from Income of Payments under Recent Tribal Trust Settlements” (25 U.S.C. 117b(a)); and

(xxvi) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)).

## EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

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

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

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

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

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

## Chapter 7: VERIFICATION

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

### INTRODUCTION

TDHCA will 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. TDHCA will not pass on the cost of verification to the family.

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

Part I describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV).

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of TDHCA.

### PART I: GENERAL VERIFICATION REQUIREMENTS

#### ***FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516 and 982.551, 24 CFR 5.230]***

The family must supply any information that TDHCA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 CFR §982.551].

#### *Consent Forms*

It is required that all adult applicants and participants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and TDHCA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

#### *Penalties for Failing to Consent [24 CFR §5.232]*

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

## **OVERVIEW OF VERIFICATION REQUIREMENTS**

### *HUD's Verification Hierarchy*

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

- Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Up-front Income Verification (UIV) using a non-HUD system.
- Written Third-party Verification Form (may be provided by applicant or participant)
- Written Third-party Verification Form
- Oral Third-party Verification
- Self-Certification

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

### *Requirements for Acceptable Documents*

Photocopies are an acceptable means of verification as long as they appear to be authentic and there is no sign of tampering with the information. If the Department has any reason to believe the documents are not authentic, the Department will request all original documents. Any documents used for verification generally must be dated within 60 calendar days of the date they are provided to the Department. The documents must not be damaged, altered or in any way illegible.

Print-outs from web pages are considered original documents.

Family self-certifications must be made in a format acceptable to the Department.

### *File Documentation*

TDHCA will document in the file how the figures used in income and rent calculations were determined. All verification attempts, will be verified as the policies set forth in the plan. The family's record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached. PHA will document verification attempts, information obtained, and decisions reached during the verification process. This information will be documented on a telephone verification form.

## **UP-FRONT INCOME VERIFICATION (UIV) EIV SYSTEM**

Up-front Income Verification refers to TDHCAs use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to TDHCA.

TDHCA will restrict access to and safeguard EIV data in accordance with HUD guidance on security procedures, as issued and made available by HUD.

There may be legitimate differences between the information provided by the family and UIV-generated information. No adverse action can be taken against a family until TDHCA has independently verified the

UIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process of TDHCA.

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

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant's families. HUD requires TDHCA to use EIV system in its entirety. The following policies apply to the use of HUD's EIV system.

#### *EIV Income Reports*

The data shown on income reports is updated quarterly. Data may be between three and 6 months old at the time reports are generated. PHA will obtain income reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process. Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used also to meet regulatory requirements for third party verification, as described above.

#### *EIV Discrepancy Reports*

The EIV discrepancy report is a tool for identifying who may have concealed or under reported income. Data in the discrepancy report represents income for past reporting periods and may be between 6 months and 30 months at the time reports are generated.

Families who have not concealed or under-reported income may appear on the discrepancy report in some circumstances, such as loss of a job or addition of new family members. This income may be identified through use of the EIV "Income Discrepancy Report" or by review of the discrepancy tab for the individual family.

TDHCA will generate the Income Discrepancy Report at least once every 3 months. When TDHCA determines that a particular family appearing on the Income Discrepancy Report has not disclosed or has under-reported income, the family will be mailed a Failure to Report Income letter. To avoid a possible repayment agreement, a subsequent interim or reexamination must be completed. TDHCA will review the EIV discrepancy during processing of annual and interim reexamination. When it appears that a family may have under-reported income, TDHCA will request written third-party verification of the income in question.

#### *EIV Identify Verification*

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

PHAs are required to use EIV's identity Verification Report on a monthly basis to improve the availability of income information will be displayed [Notice PIH 2010-3].

TDHCA will identify participants whose identity verification has failed by reviewing the EIV Identity Verification Report monthly. TDHCA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When TDHCA determines the discrepancy exists due to PHA errors such as spelling, or incorrect birth dates, the error will be corrected promptly.

#### **Upfront Income Verification Using Non-HUD Systems**

In addition to mandatory use of the EIV system, HUD encourages PHAs to utilize other upfront verification sources.

TDHCA will inform all applicants and participants of its use of the following UIV resources during the admission and reexamination process: HUD's EIV system and The Work Number or other similar type income sources.

### ***THIRD-PARTY WRITTEN AND ORAL VERIFICATION***

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to TDHCA by the family. If written third-party verification is not available, TDHCA will attempt to obtain a "written third-party verification form. This is a standard form used to collect information from a third party.

#### *Written Third-Party Verification [Notice PIH 2010-19]*

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source

Acceptable tenant-provided documents include, but are not limited to: paycheck stubs, company letterhead from employer, SSA benefits verification, bank statements, child-support award letters, welfare benefit letters, unemployment and monetary notices. Verification of earned income must be within 60 days of the request. TDHCA may reject documentation provided by the family if the document is a copy, appears to be forged, or if the document is altered, mutilated, or illegible. If TDHCA determines the third-party document provided by the family are not acceptable, TDHCA will explain the reason to the family and request additional documentation.

#### *Written Third-Party Verification Form*

When upfront verification is not available and the family is unable to provide written third-party documents, TDHCA will request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

A written third-party verification form is mandatory when there is an unreported source of income or a substantial difference in reported income of \$3,000 annual or more and there is no UIV or tenant-provided documentation to support the income discrepancy.

TDHCA will send third-party verification forms directly to the third-party by mail, fax, or email. Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by TDHCA. HUD requires TDHCA to make at least two attempts to obtain third-party verification before using another form of verification [VG, p. 15].

#### *Oral Third-Party Verification [Notice PIH 2010-19]*

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person. Oral third-party verification is mandatory if neither form of written third-party verification is available. Third-party oral verification may be used when a request for written third-party verification forms have not been returned within a reasonable time. *e.g.*, fourteen calendar days.

In collecting third-party oral verification, PHA will record in the family's file the name, title of the person contacted, date, time of the conversation, for each attempt, phone number used, email with read-receipt confirmation, and the facts provided. The Department will initiate a third-party oral verification if verification is not received on the fifteenth calendar day.

The Department will make a minimum of two attempts, one of which may be oral, to obtain third-party verification. A record of each attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file.

When any source responds verbally to the initial written request for verification the Department will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

#### *When Third-Party Information is Late*

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

#### *When Third-Party Verification is Not Required [Notice PIH 2017-12]*

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

If the family cannot provide original documents, and it is not cost effective for TDHCA to receive, TDHCA will accept a self-certification as the only means of verification. The cost will not be passed on to the family.

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

#### *Primary Documents*

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

#### *Imputed Assets and Expenses*

TDHCA will accept a self-certification from a family if assets disposed of for less than fair market value [HCV GB, p. 5-28]. TDHCA will determine that third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification [VG, p. 15].

The Department will use a self-certification in lieu of requesting third-party verification when the market value of an individual asset or an expense is less than \$5000 annually **and** the family has original documents that support the declared amount.

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

TDHCA will determine that third-party verification is not available when it is known that an income source does not have the ability to provide written or oral third-party verification [VG, p. 15]. For example, TDHCA will rely upon review of documents when TDHCA determines that a third party's privacy rules prohibit the source from disclosing information. Another example would be the Social Security Administration (SSA) refusing to respond to requests for third-party verification.

The Department also will determine that third-party verification is necessary when there is a service charge for verifying an asset or expense *and* the family has original documents that provide the pertinent information.

If the family cannot provide original documents, the Department will accept a self-certification from the tenant as the only means of verification. The cost of verification will not be passed on to the family.

## **REVIEW OF DOCUMENTS**

### *Using Review of Documents as Verification*

If TDHCA has determined that third-party verification is not available or not required, TDHCA will use documents provided by the family as verification.

TDHCA may also review documents when necessary to help clarify information provided by third parties. In such cases, TDHCA will document in the file how TDHCA arrived at a conclusion about the income or expense to include in its calculations.

The tenant file will include documentation of records reviewed by the Department's Regional Coordinator (RC) which support the family's statements.

If possible, original copies (not photocopies) of supporting documents should be reviewed, though the Department RC should photocopy the document (unless prohibited by law) and place it in the tenant's file. The Department RC reviewing the document(s) should prepare a summary of the information, sign and date.

The summary should include the rationale for using document review as verification and again, if possible, follow up with the third party to obtain written verification later.

### *Self-Certification*

Self-certification, or "tenant declaration", is used as a last resort when TDHCA is unable to obtain third-party verification.

The Department may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the Department and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a Department representative or notary public.

## Part II: Verifying FAMILY INFORMATION

### VERIFICATION OF LEGAL IDENTITY

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

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers	Certificate of birth
Church issued baptismal certificate	Adoption papers
Current, valid driver's license or Department of Motor Vehicles identification card	Custody agreement (through the courts)
U.S. military discharge (DD 214)	Health and Human Services ID (foster children; adopted children)
U.S. passport	School Records
Employer identification card	Delegation of Parental Authority
	I-94 School records

The Department will require families to furnish verification of legal identity for each household member. A birth certificate is the preferred document for verification of legal identity. If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required. Legal identity will be verified on an as needed basis.

### ***SOCIAL SECURITY NUMBERS [24 CFR 5.216 and Notice PIH 2010-3]***

The family must provide documentation of a valid social security number (SSN) for each family member of the household, with the exception of individuals elect not to declare that they have eligible immigration status. Exemptions also include, existing program participants as of January 31, 2010, who have either previously disclosed social security number that HUD has determined to be valid or are 62 years of age and received covered housing assistance before January 31, 2010.

If a family member reports an SSN but cannot provide acceptable documentation of the number, TDHCA will require a self-certification stating that documentation of the SSN cannot be provided at this time. TDHCA will give the family member 90 calendar days from the date of the family member's self-certification.

If the family is an applicant, assistance cannot be provided until proper documentation of the SSN is provided.

TDHCA will instruct the family to obtain a duplicate card from the local Social Security Administration (SSA) office or verification of social security number from the SSA. If an individual is at least 62 years of age is unable to submit the required documentation of their SSN within the initial 90-day period, TDHCA will grant an additional 90 calendar days to provide documentation. If any family member obtains an SSN after admission to the program, the new SSN must be disclosed within 30 days. The social security numbers of household members, such as live-in aids, must be verified For the purpose of conducting criminal background checks.

### *Documentation of Age*

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

If an official record of birth or evidence of social security retirement benefits cannot be provided, the Department will require the family to submit other documents that support the reported age of the family member (*e.g.*, school records, driver's license if birth year is recorded) and to provide a self-certification.

Age need only be verified only once during continuously assisted occupancy.

### **FAMILY RELATIONSHIPS**

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Verification of guardianship is a court-ordered assignment, school records, verification from social services agency/ Supplemental Nutrition Assistance Program (SNAP) showing family members. Self-certification of temporary guardianship or appointment from parent.

### *Marriage*

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

A marriage certificate may be required to verify the validity of the marriage if the Department believes or receives information indicating that an individual's declaration may not be accurate. If a marriage certificate is not available, the following information is acceptable:

- Driver's license that displays the same address and last names;
- Federal tax forms that indicate that the family filed taxes as a married couple during the last tax-reporting period;
- Other acceptable forms of documentation of marriage would include any document that has been issued by a federal state, city or county government and indicates that the individuals are living as a married couple. Couples that are considered married under common law can provide the same information as listed above to document that they are living together as a married couple. In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (*e.g.*, by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

### *Separation or Divorce*

Certification by the head of household is normally sufficient verification. If the Department has reasonable doubts about a separation or divorce, the Department may require at least one of the verifications listed below:

- A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.
- A copy of a court-ordered maintenance or other court record is required to document a separation.
- If no court document is available, documentation from a community-based agency will be accepted.

- A notarized statement from current landlord (not family) verifying that the current landlord knows that the applicant and spouse have not lived together for the last six months or more;
- Income tax statements from both husband and wife indicating both filed income taxes separately the last year and that they filed from different addresses;
- Written statement from lawyer that applicant has filed suit for divorce because of physical abuse;
- Written statement from an abuse shelter, law enforcement agencies, and/or social services agencies that applicant needs housing due to physical abuse; or
- Food stamp verification, if no other documentation is available.
- If no court document is available, documentation from a community-based agency will be accepted.

#### *Absence of Adult Member*

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family. Examples of such situations include:

- Husband or wife institutes divorce action
- Husband or wife institutes legal separation
- Order of protection/ restraining order obtained by one family member against another
- Documentation of another address at which the person resides (e.g., a lease/ utility bill)
- Certification of the spouse no longer living in the unit or contributing to the family

#### *Foster Children and Foster Adults*

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

#### **VERIFICATION OF STUDENT STATUS**

The Department requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or co-head
- The family reports a childcare deduction to enable a family member to further his or her education
- The family includes a student enrolled in an institution of higher education
- The family claims income exclusion because the student is receiving earned income and only the first \$480 is included as income.

#### *Restrictions on Assistance to Students Enrolled in Institutions of Higher Education*

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

In accordance with the verification hierarchy described in Section 6-1.B, TDHCA will determine whether the student is exempt from the restrictions in 24 CFR §5.612 by verifying any one of the following exemption criteria:

- The student is enrolled at an educational institution that does not meet the definition of *institution of higher education* in the Higher Education Act of 1965 (see Section Exhibit 3-2).
- The student is at least 24 years old.
- The student is a veteran, as defined in Section 3-II.E.
- The student is married.
- The student has at least one dependent child, as defined in Section 3-II.E.
- The student claims a disability, as such term is defined in section 3(b)(3)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437A(B)(3)(e) and was receiving assistance under the Housing Choice Voucher Program prior to November 30, 2005.

#### *Income Determination*

PHAs must include amounts of financial assistance an individual receives in excess of tuition and other required fees and charges when determining annual income in accordance with 24 CFR 5.609(b)(9).

If TDHCA cannot verify at least one of these exemption criteria, PHA will conclude that the student is subject to the restrictions on assistance at 24 CFR §5.612. In addition to verifying the student's income eligibility, PHA will then proceed to verify either the student's parents' income eligibility or the student's independence from his/her parents (see below).

#### *Independent Student*

PHA will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

- Either reviewing or verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of independent student (see Section 3-II.E).
- Reviewing prior year income tax returns to verify whether a parent has claimed the student as a dependent.
- Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is \$0.

#### **DOCUMENTATION OF DISABILITY**

TDHCA will verify the existence of a disability in order to allow certain income disallowances and deductions from income. See Chapter 2, Part II, for the policies that relate to persons with disabilities.

#### *Family Members Receiving SSA Disability Benefits*

TDHCA will attempt to obtain information about disability benefits through the HUD EIV System when it is available, or HUD's Tenant Assessment Subsystem (TASS). If the HUD EIV System or TASS is not available,

TDHCA will attempt to obtain third-party written/oral verification from the SSA. If third-party verification is not available, the family may provide an original SSA document that confirms the current benefits.

Verification of receipt of SSA benefits or SSI based upon disability is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions.

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

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

For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability in 24 CFR §5.403.

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

### ***CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]***

#### *Overview*

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons.

A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and PHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy [24 CFR §5.508(g) (5)]

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

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

TDHCA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

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

#### *Eligible Immigrants: Documents Required and PHA Verification [HCV GB, pp. 5-3 and 5-7]*

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals. The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration

status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-2 at the end of this chapter summarizes documents family members must provide.

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. Of this plan. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, TDHCA will verify immigration status with the United States Citizenship and Immigration Services (USCIS).

TDHCA will follow all USCIS protocols for verification of eligible immigration status.

### ***VERIFICATION OF PREFERENCE STATUS***

TDHCA will verify any preferences claimed by an applicant. The Department offers Project Access preferences for some vouchers as reflected in the Texas Administrative Code. Certain project-based VASH vouchers have preferences for the elderly or disabled as reflected in the project's HAP contract. Disaster recovery impacted households, for a disaster as identified by the Department, are eligible for a preference for all other vouchers. Verification occurs prior to issuance of vouchers.

## **PART III: Verifying Income AND ASSETS**

Chapter 6, Part I of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides PHA policies that supplement the general verification procedures specified in Part I of this chapter.

### ***EARNED INCOME***

#### *Tips*

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to provide a signed estimate of tips received for the prior year and tips anticipated to be received in the coming year. Tips will also be verified via the employer identification form sent directly from the Department to the employer.

#### *Business and Self-Employment Income*

Business owners and self-employed persons will be required to provide:

- An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.
- All schedules completed for filing federal and local taxes in the preceding year.
- If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

TDHCA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination, TDHCA may request documents that support submitted financial statements such as manifests, appointment books, cashbooks, or bank statements.

If a family member has been self-employed less than three months, TDHCA will accept the family member's certified estimate of income and schedule an interim reexamination in three months. If the family member has been self-employed for three to twelve months TDHCA will require the family to provide documentation of income and expenses for this period and use that information to project income.

### **PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

#### *Social Security/SSI Benefits*

To verify the SS/SSI benefits of applicants, the Department will obtain information about social security/SSI benefits through the HUD EIV System or the Tenant Assessment Subsystem (TASS). If benefit information is not available in HUD systems, the Department will attempt to use third party verification to obtain current SSA benefits. Verification must be within 60 days.

If third party verification is not available the Department will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the Department will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the participant has received the benefit verification letter they will be required to provide it to the Department.

### **SPOUSAL SUPPORT OR CHILD SUPPORT**

The way the Department will seek verification for spousal support and child support differs depending on whether the family declares that it receives regular payments. The Department requests for the family to certify whether they are receiving or not receiving child support at the time of family admission or renewal.

If the family declares that it **receives regular payments**, verification will be sought in the following order.

- If payments are made through a state or local entity, the Department will request a record of payments through the Office of the Attorney General.
- Third-party verification from the person paying the support
- Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules
- Copy of the latest check and/or payment stubs
- Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

If the family declares that it **receives irregular or no payments**, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

- A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts
- If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

Note: Families are not required to undertake independent enforcement action.

## **ASSETS AND INCOME FROM ASSETS**

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

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. TDHCA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28]. The Department will verify the value of assets disposed of only if:

- The Department does not already have a reasonable estimation of its value from previously collected information, or
- The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and TDHCA verified this amount. Now the person reports that she has given this \$10,000 to her son. TDHCA has a reasonable estimate of the value of the asset; therefore, recertification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, TDHCA will verify the value of this asset.

## **NET INCOME FROM RENTAL PROPERTY**

The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the Department will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

## **RETIREMENT ACCOUNTS**

When third-party verification is not available, the type of original document that will be accepted depends upon the family member's retirement status.

- Before retirement, the Department will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.
- Upon retirement, the Department will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.
- After retirement, the Department will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

## **INCOME FROM EXCLUDED SOURCES**

A detailed discussion of excluded income is provided in Chapter 6, Part I.

TDHCA will obtain verification for income exclusions only if, without verification, TDHCA would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, TDHCA will confirm that PHA records verify the child's age but will not send a verification request to the restaurant. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

The Department will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance). In all other cases, the Department will report the amount to be excluded as indicated on documents provided by the family.

### **7-III.I. ZERO ANNUAL INCOME STATUS**

Families claiming to have no annual income will be required to execute verification forms to determine that certain forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by the household.

If the family has reported zero income, the Department will have the family sign a verification form to verify that no income is being provided. In addition, the Department will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income. Families whose TTP is at or below the minimum rent will be required to complete a family expense summary. Also, TDHCA will verify UIV sources.

*Families will be required to report any changes in their income status within 30 calendar days of the occurrence of employment and/or if any other type of income is received.*

## **PART IV: VERIFYING MANDATORY DEDUCTIONS**

### **DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that TDHCA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

#### *Dependent Deduction*

See Chapter 6 (6-II.B.) for a full discussion of this deduction. TDHCA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

#### *Elderly/Disabled Family Deduction*

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. TDHCA will verify that the head, spouse, or Co-head is 62 years of age or older or a person with disabilities.

## ***MEDICAL EXPENSE DEDUCTION***

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

### *Amount of Expense*

The Department will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

- Third-party verification form signed by the provider, when possible
- If third party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case, the Department will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The Department will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
- If third party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months

In addition, TDHCA will verify that:

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

### *Eligible Household*

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. TDHCA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

### *Qualified Expenses*

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for TDHCA's policy on what counts as a medical expense.

### *Unreimbursed Expenses*

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source. The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

### *Expenses Incurred in Past Years*

When anticipated costs are related to on-going payment of medical bills incurred in past years, the Department will verify:

- The anticipated repayment schedule
- The amounts paid in the past, and
- Whether the amounts to be repaid have been deducted from the family's annual income in past years

## ***DISABILITY ASSISTANCE EXPENSES***

Policies related to disability assistance expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I.

### *Amount of Attendant Care Expense*

The Department will provide a third-party verification form directly to the care provider requesting the needed information. Expenses for attendant care will be verified through:

- Third-party verification form signed by the provider, when possible
- If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months

### *Amount of Auxiliary Apparatus Expense*

Expenses for auxiliary apparatus will be verified through:

- Third-party verification of anticipated purchase costs of auxiliary apparatus
- If third party is not possible, billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months
- If third party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months

In addition, TDHCA will verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

### *Family Member is a Person with Disabilities*

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. TDHCA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

### *Family Member(s) Permitted to Work*

TDHCA will verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

The Department will seek third-party verification from a Rehabilitation Agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).

If third party and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

#### *Unreimbursed Expenses*

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

### **CHILD CARE EXPENSES**

Policies related to childcare expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, TDHCA will verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of childcare.
- The costs are reasonable if seeking employment or furthering education.

#### *Eligible Child*

To be eligible for the childcare deduction, the costs must be incurred for the care of a child under the age of 13. TDHCA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

#### *Unreimbursed Expense*

To be eligible for the childcare deduction, the costs must not be reimbursed by another source.

The childcare provider will be asked to certify that, to the best of the provider's knowledge, the childcare expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that the childcare expenses are not paid by or reimbursed to the family from any source.

#### *Pursuing an Eligible Activity*

TDHCA will verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

*Information to be Gathered:* The Department will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

*Seeking Work:* Whenever possible the Department will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases, the Department will request verification from the agency of the member's job seeking efforts to date and require the family to submit to the Department any reports provided to the other agency.

In the event third-party verification is not available, the Department will provide the family with a form on which the family member must record job search efforts. The Department will review the information at each subsequent reexamination for which this deduction is claimed.

*Furthering Education:* The Department will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the childcare is enrolled and provide information about the timing of classes for which the person is registered.

*Gainful Employment:* The Department will seek verification from the employer of the work schedule of the person who is permitted to work by the childcare. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

#### *Allowable Type of Child Care*

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

The Department will verify that the type of childcare selected by the family is allowable, as described in Chapter 6 (6-II.F).

The Department will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The Department will verify that the childcare provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

#### *Reasonableness of Expenses*

Only reasonable childcare costs can be deducted.

The actual costs the family incurs will be compared with the Department's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable. To establish the reasonableness of childcare costs, the Department will use the schedule of childcare costs from the local welfare agency.

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

**U.S. Department of Housing and Urban Development Office of Public and Indian Housing**

**The New HUD Regulation: 24 CFR 5.233.** Effective January 31, 2010, all PHAs are required to use the EIV system in its entirety. This means that PHAs must use all features of the EIV system to:

- a. Verify tenant employment and income information during mandatory reexaminations of family composition and income in accordance with 24 CFR §5.236, and HUD administrative guidance; and
- b. Reduce administrative and subsidy payment errors in accordance with HUD administrative guidance.

All PHAs are required to review the EIV Income Report of each family before or during mandatory annual and interim reexaminations of family income and/or composition to reduce tenant under reporting of income and improper subsidy payments. EIV is classified as an UIV technique (or automated written third party verification), which helps to identify income sources and/or amounts that the tenant may not have disclosed. This UIV technique in many instances will reduce the need to mail or fax third party verification request forms to an income source. EIV also provides various reports to assist PHAs with the following:

- a. Identifying tenants whose reported personal identifiers do not match the SSA database;
- b. Identifying tenants who need to disclose a SSN;
- c. Identifying tenants whose alternate identification number (Alt ID) needs to be replaced with a SSN;
- d. Identifying tenants who may not have reported complete and accurate income information;
- e. Identifying tenants who have started a new job;
- f. Identifying tenants who may be receiving duplicate rental assistance;
- g. Identifying tenants who are deceased and possibly continuing to receive rental assistance;
- h. Identifying former tenants of PIH rental assistance programs who voluntarily or involuntarily left the program and have a reportable adverse status and/or owe money to a PHA or Section 8 landlord.

**Verification Hierarchy:**

PHAs are required to access the EIV system and obtain an Income Report for each household. TDHCA is required to maintain the Income Report in the tenant file along with the form HUD-50058 and other supporting documentation to support income and rent determinations for all mandatory annual reexaminations of family income and composition.

If the Income Report does not contain any employment and income information for the family, TDHCA should attempt the next lower level verification technique, as noted in the below chart.

## Level Verification Technique Ranking:

<b>EXHIBIT 7-1: HUD VERIFICATION GUIDANCE NOTICE (PIH 2004-01, pp. 11-14) cont.</b>
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Using HUD's Enterprise Income Verification (EIV) system (not available for income verifications of applicants) **Highest** (Mandatory)

### **6 Upfront Income Verification (UIV)**

**Highest** Mandatory - using HUD's Enterprise Income Verification (EIV) system and the Income Validation Tool (IVT) (not available for income verifications of new applicants)

### **5 Upfront Income Verification (UIV)**

Using non-HUD system (Optional)

### **4 Written third Party Verification High**

(Mandatory to supplement EIV-reported income sources and when EIV has no data; Mandatory for non-EIV reported income sources; Mandatory when tenant disputes EIV reported employment and income information **and** is unable to provide acceptable documentation to support dispute)

### **3 Written Third Party Verification Form**

**Medium-Low**(Mandatory if written third party verification documents are not available or rejected by TDHCA; and when the applicant or tenant is unable to provide acceptable documentation)

### **2 Oral Third Party Verification Low**

(Mandatory if written third party verification is not available) Must document file narrative when this verification system is used.

### **1 Tenant Declaration Low**

(Use as a last resort when unable to obtain any type of third party verification)

**Note:** This verification hierarchy applies to income determinations for applicants and participants. However, EIV is not available for verifying income of applicants.

**Verification Technique Definitions Third Party Verification Techniques Upfront Income Verification (UIV) (Level 6/5):** The verification of income before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a number of individuals. It should be noted that the EIV system is available to all PHAs as a UIV technique. PHAs are encouraged to continue using other non-HUD UIV tools, such as The Work Number (an automated verification system) and state government databases, to validate tenant-reported income.

**Written Third Party Verification (Level 4):** An original or authentic document generated by a third party source dated either within the 60-day period preceding the reexamination or PHA request date. Such documentation may be in the possession of the tenant (or applicant), and is commonly referred to as tenant-provided documents. It is the Department's position that such tenant-provided documents are written third party verification since these documents originated from a third party source. TDHCA may, at its discretion, reject any tenant-provided documents and follow up directly with the source to obtain necessary verification of information.

Examples of acceptable tenant-provided documentation (generated by a third party source) include, but are not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit verification letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Current acceptable tenant-provided documents must be used for income and rent determinations.

TDHCA is required to obtain between two - four current and consecutive pay stubs for determining annual income from wages. For new income sources or when two pay-stubs are not available, TDHCA

<b>EXHIBIT 7-1: HUD VERIFICATION GUIDANCE NOTICE (PIH 2004-01, pp. 11-14) cont.</b>
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should project income based on the information from a traditional written third party verification form or the best available information.

**Note:** Documents older than 60 days (from TDHCA interview/determination or request date) is acceptable for confirming effective dates of income.

**Written Third Party Verification Form (Level 3):** Also, known as traditional third party verification. A standardized form to collect information from a third party source. The third party completes the form by hand (in writing or typeset). PHAs send the form directly to the third party source by mail, fax, or email.

It is the Department's position that the administrative burden and risk associated with use of the traditional third party verification form may be reduced by PHAs relying on acceptable documents that are generated by a third party, but in the possession of and provided by the tenant (or applicant). Many documents in the possession of the tenant are derived from third party sources (i.e. employers, federal, state and/or local agencies, banks, etc.).

The Department recognizes that third party verification request forms sent to third party sources often are not returned. In other instances, the person who completes the verification form may provide incomplete information; or some tenants may collude with the third party source to provide false information; or the tenant intercepts the form and provides false information.

The Department requires PHAs to rely on documents that originate from a third party source's computerized system and/or database, as this process reduces the likelihood of incorrect or falsified information being provided on the third party verification request form. The use of acceptable tenant-provided documents, which originate from a third party source, will improve the integrity of information used to determine a family's income and rent and ultimately reduce improper subsidy payments. This verification process will also streamline the income verification process.

**Oral Third Party Verification (Level 2):** Independent verification of information by contacting the individual income/expense source(s), as identified through the UIV technique or identified by the family, via telephone or in-person visit. PHA staff should document in the tenant file, the date and time of the telephone call (or visit to the third party), the name of the person contacted and telephone number, along with the confirmed information. This verification method is commonly used in the event that the independent source does not respond to TDHCA's faxed, mailed, or e- mailed request for information in a reasonable period, i.e., 10 business days.

**Non-Third Party Verification Technique Tenant Declaration (Level 1):** The tenant submits

an affidavit or notarized statement of reported income and/or expenses to TDHCA. This verification method should be used as a last resort when TDHCA has not been successful in obtaining information via all other verification techniques. When TDHCA relies on tenant declaration, TDHCA will document in the tenant file why third party verification was not available.

### **Exceptions to Third Party Verification Requirements**

HUD is aware that in some situations, third party verification is not available for a variety of reasons. Oftentimes, TDHCA may have made numerous attempts to obtain the required verifications with no success, or it may not be cost effective to obtain third party verification of income, assets, or expenses, when the impact on total tenant payment is minimal. In these cases, TDHCA is **required to document in the family file the reason(s) why third party verification was not available.**

<b>EXHIBIT 7-1: HUD VERIFICATION GUIDANCE NOTICE (PIH 2004-01, pp. 11-14) cont.</b>
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The exception to third party verification can be found at 24 CFR §960.259(c)(1) and §982.516(a)(2), which states, “TDHCA will obtain and document in the family file third party verification of the following factors, **or must document in the file why third party verification was not available.**”

**Third party verification requirements.** In accordance with 24 CFR §960.259(c) (1) and 24 CFR §982.516(a) (2) for the Public Housing and the HCV programs, respectively, TDHCA will obtain and document in the tenant file third party verification of the following factors, or must document in the tenant file why third party verification was not available: (i) reported family annual income; (ii) the value of assets; (iii) expenses related to deductions from annual income; and (iv) other factors that affect the determination of adjusted income.

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

- All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to TDHCA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

**Elderly Noncitizens**

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

**All other Noncitizens**

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
  - “Admitted as a Refugee Pursuant to Section 207”
  - “Section 208” or “Asylum”
  - “Section 243(h)” or “Deportation stayed by Attorney General”
  - “Paroled Pursuant to Section 221 (d)(5) of the USCIS”

- Form I-94 Arrival-Departure Record with no annotation accompanied by:
  - A final court decision granting asylum (but only if no appeal is taken);
  - A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);
  - A court decision granting withholding of deportation; or
  - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).

- Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.

- Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.

- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*

## Chapter 8: HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR Part 982 Subpart I and 24 CFR 982.507]

### INTRODUCTION

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

All units must pass an HQS inspection prior to the approval of a lease and at least once every 24 months during the term of the contract, and at other times as needed to determine that the unit meets HQS. Effective 07/01/2014, PHAs may establish a policy for performing unit inspections biennially rather than annually. PHAs will still have the option to inspect every unit annually.

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

HQS are the HUD minimum quality standards for tenant-based programs. HQS standards are required both at initial occupancy and during the term of the lease. HQS standards apply to the building and premises, as well as the unit. Newly leased units must pass the HQS inspection before the beginning date of the assisted lease and HAP contract.

This chapter explains HUD and PHA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections TDHCA will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies TDHCA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

## **PART I: PHYSICAL STANDARDS**

### **GENERAL HUD REQUIREMENTS**

#### *HUD Performance and Acceptability Standards*

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors/ Carbon Monoxide Detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

#### *Tenant Preference Items*

HUD requires TDHCA to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, TDHCA will ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Attachment 8-2 summarizes those items that are considered tenant preferences.

#### *Modifications to Provide Accessibility*

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

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS

and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

The Department has not established a policy for negotiations of a restoration agreement. Any owner requesting restoration or a restoration agreement will have the request evaluated on a case-by-case basis.

### **ADDITIONAL PHA REQUIREMENTS**

TDHCA may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if TDHCA additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

#### *Thermal Environment [HCV GB p.10-7]*

TDHCA will define a "healthy living environment" for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

The heating system must be capable of maintaining an interior temperature of 65 degrees Fahrenheit between October 1 and May 1.

#### *Clarifications of HUD Requirements*

As permitted by HUD, the Department has adopted the following specific requirements that elaborate on HUD standards.

**Walls:** In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

**Windows:** Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced. Windows must be weather-stripped as needed to ensure a weather-tight seal. Window screens are optional. If present, must be in good condition. Screens are optional on patio doors.

**Doors:** All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold. A keyed dead bolt locking device and door viewer will be required on any exterior door of the dwelling. All interior doors must have no holes, have all trim intact, and be operable without the use of a key.

**Floors:** All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be re-secured and made level. If they cannot be leveled, they must be replaced. All floors must be in a finished state. Raw wood or unsealed concrete is not permitted. All floors should have some type of base shoe, trim, or sealing. Vinyl base shoe is permitted. Base is a narrow molding often of quarter round joining the bottom of a baseboard and the floor.

**Sinks:** All sinks and commode water lines must have shut off valves, unless faucets are wall mounted. All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly. All sinks must have functioning stoppers.

**Security:** If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

**Toilets:** All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

***Additional PHA Requirements:***

- All appliances provided by the owner must be kept in safe and working condition.
- All plumbing fixtures must be free from drips and leaks.
- All holes in walls are to be patched with the exception of minor nail holes.
- Doorstops are required on all doors subject to damaging walls when opened.
- If cabinets are designed to have drawers and doors, all must be operational.
- All closets and doors designed with knobs should have all knobs present and in working condition.
- All sliding patio doors must have proper rollers so that they are in easy working condition.
- All severely chipped or rusted sinks and bathtubs must be patched, repaired, or replaced.
- All holes in the yard area, which could be a tripping hazard, must be corrected.
- The presence and location of smoke detectors in all HCV units must be in compliance with
- HUD's regulations.
- There shall be no missing circuit breakers or openings in the circuit panel. The circuit panel (breaker box) shall be a dead front with no openings.
- Units must be clearly identified with house or apartment numbers.
- Light fixtures that require a cover/ globe must be installed, unless it is designed not to have support.
- Manufactured home must be securely anchored by a Tie-down device.
- Carpet and flooring must be clean and in sanitary condition.

***LIFE THREATENING CONDITIONS [24 CFR §982.404(a)]; FR Notice 1/18/17]***

HUD requires TDHCA to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life-threatening conditions within 24 hours of PHA notification.

A re-inspection will be conducted to verify the items have been repaired.

Life threatening conditions are defined as: "Any condition that renders a dwelling unit unfit for human habitation and/or places the occupants of said dwelling unit in an immediate, dangerous, and/or health/safety situation including deficient heating and/or cooling of the unit."

1. Gas (natural or liquid petroleum) leak or fumes. A life-threatening condition under this standard is one of the following: (a) a fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking; or (b) a strong gas odor detected with potential for explosion or fire, or that

results in health risk if inhaled.

2. Electrical hazards that could result in shock or fire. A life-threatening condition under this standard is one of the following: (a) a light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed; (b) a light fixture is hanging by its wires; (c) a light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day to day use of the unit; (d) a receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed; (e) a receptacle (outlet) or switch has a missing or damaged cover plate and electrical connections or wires are exposed; (f) an open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses; (g) a cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections; (h) any nicks, abrasions, or fraying of the insulation that expose conducting wire; (i) exposed bare wires or electrical connections; (j) any condition that results in openings in electrical panels or electrical control device enclosures; (k) water leaking or ponding near any electrical device; or (l) any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition.
3. Inoperable or missing smoke detector. A life-threatening condition under this standard is one of the following: (a) the smoke detector is missing; or (b) the smoke detector does not function as it should.
4. Interior air quality. A life-threatening condition under this standard is one of the following: (a) the carbon monoxide detector is missing; or (b) the carbon monoxide detector does not function as it should.
5. Gas/oil fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney or venting. A life-threatening condition under this standard is one of the following: (a) the chimney or venting system on a fuel fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gases; (b) a gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside; (c) a fuel fired space heater is not properly vented or lacks available combustion air; (d) a non-vented space heater is present; (e) safety devices on a fuel fired space heater are missing or damaged; or (f) the chimney or venting system on a fuel fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged which may cause improper or dangerous venting of gases.
6. Lack of alternative means of exit in case of fire or blocked egress. A life-threatening condition under this standard is one of the following: (a) any of the components that affect the function of the fire escape are missing or damaged; (b) stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency; or (c) the building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency.
7. Other interior hazards. A life-threatening condition under this standard is a fire extinguisher (where required) that is missing, damaged, discharged, overcharged, or expired.
8. Deteriorated paint, as defined by 24 CFR 35.110, in a unit built before 1978 that is to be occupied by a family with a child under 6 years of age. This is a life-threatening condition only for the purpose of a condition that would prevent a family from moving into the unit. All lead hazard reduction requirements in 24 CFR part 35, including the timeline for lead hazard reduction procedures, still apply.
9. Any other condition subsequently identified by HUD as life threatening in a notice published in the Federal Register.
10. Additional life-threatening conditions as defined by TDHCA:

- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Lack of a functioning toilet in the unit
- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit
- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury or jeopardize the security of the unit, as determined by the inspector and PHA

If an owner fails to correct life threatening conditions as required by TDHCA, the housing assistance payment will be abated and the HAP contract will be terminated.

If a family fails to correct a family caused life threatening condition as required by TDHCA, TDHCA may terminate the family's assistance.

The owner will be required to repair an inoperable smoke detector unless TDHCA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

### ***OWNER AND FAMILY RESPONSIBILITIES [24 CFR §982.404]***

#### *Family Responsibilities*

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- Failure to maintain the unit and premises in decent and sanitary conditions that could result in potential health and/ or safety concerns
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items that could not be charged against the tenant's security deposit under state law or court practice

#### *Owner Responsibilities*

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

### ***SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR §35.1225]***

If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level (EBLL) of 5 micrograms per deciliter or higher TDHCA will complete an environmental investigation in accordance with program requirements of the dwelling unit within 15 days of the notification. TDHCA will ensure that a certified Lead-Based Paint Risk Assessor performs the environmental investigation unless the local public health agency has evaluated for hazards and possible sources of exposure. The result of the environmental investigation must be immediately provided to the owner of the dwelling unit.

Within 30 days after receiving the environmental investigation report from TDHCA, or the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. The owner must notify all residents of lead evaluation if the dwelling unit is part of multi-unit property. It is TDHCA's responsibility to ensure that any required lead hazard control (including passing clearance) is complete and that the owner has cleared the unit of lead-based paint hazards identified in the environmental investigation. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and TDHCA will take action in accordance with Section 8-II.G.

PHA reporting requirements, and data collection and recordkeeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

### ***VIOLATION OF HQS SPACE STANDARDS [24 CFR §982.403]***

If TDHCA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, TDHCA will issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, TDHCA will terminate the HAP contract in accordance with its terms.

A unit meets HQS space standard if the dwelling unit has at least one bedroom or living/sleeping room for each two persons. A kitchen or bathroom cannot be considered a living/sleeping room. (24 CFR §982.401(f)(2)). See also Chapter 5, Part II.

## **PART II: THE INSPECTION PROCESS**

### ***OVERVIEW [24 CFR §982.405]***

#### *Types of Inspections*

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

- *Initial Inspections.* TDHCA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- *Annual/ Biennial Inspections.* HUD requires TDHCA to inspect each unit under lease at least biennially to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately. If a PHA opts to inspect annually, or opts to perform some inspections annually and some biennially, this Plan must provide for that determination.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that all inspectors are enforcing HQS correctly and uniformly.

### *Inspection of representative-owned Units*

When a Department staff owns property in which a Department's HCV tenant resides or will reside, the manager or another qualified inspector must perform the required HQS inspection. A Department staff's unit is defined as a unit that is owned by an employee of the Department (or a separate agency that also employs the employee) that administers the HCV assistance to a family. If the Department utilizes a non-affiliated inspector to conduct the HQS inspection, they must communicate the results of each inspection to the family and the Department.

### *Inspection Costs*

In the case of inspections of the Department staff owned units, the Department may use administrative fees to compensate the non-affiliated inspector for inspections performed. Neither the Department nor the non-affiliated inspector may charge the family or the owner of the unit any fee for the inspection [24 CFR §982.352(b)].

### *Notice and Scheduling*

The family must allow TDHCA to inspect the unit at reasonable times with reasonable notice [24 CFR §982.551(d)].

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered not less than 48 hours. In the case of a life-threatening emergency, the Department will give as much notice as possible, given the nature of the emergency.

Inspections may be scheduled between 7:30 a.m. and 6:30 p.m. Generally, inspections will be conducted on business days only. For Initial Inspections, the Department is required to complete the inspection within 15 days after receiving the Request for Tenancy Approval (RTA) from the applicant.

### *Attendance at inspections by owner and family [HCV GB p. 10-27].*

When a family occupies the unit at the time of inspection, an adult family member 18 or older, or family representative must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the Department will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

## **INITIAL HQS INSPECTION [24 CFR 982.401(a)]**

### *Timing of Initial Inspections*

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA).

The Department will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the RTA. If the unit fails the initial Housing Quality Standards inspection, the family and owner will be advised to notify TDHCA once repairs are completed. Self-Certifications are not permitted for an initial inspection.

The Department may accept as satisfactory an inspection of the unit performed for a different housing program, which may include but is not limited to inspections for properties funded with housing tax credits.

### *Inspection Results and Re-inspections*

If any HQS violations are identified, the owner will be notified in writing of the deficiencies and be given 10 calendar days to correct them. If requested by the owner, the period for correcting the deficiencies may be extended by the Department for good cause. The Department will re-inspect the unit within seven business days of the date the owner notifies the Department that the required corrections have been made.

If the time period for correcting the deficiencies (or any Department-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the Department will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The Department may agree to conduct a second re-inspection, for good cause, at the written request of the family and owner.

Following a failed re-inspection, the family may submit a new RTA for the unit if the family has not found another unit by the time the owner completes all repairs and the family continues to wish to live in the unit.

### *Utilities*

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

The Department will not conduct the initial inspection until all utilities are connected and operational. The HAP contract will not be executed until the utilities are connected and all other HQS requirements are fulfilled.

### *Appliances*

If the family is responsible for supplying the stove and/or refrigerator, the Department will require the stove and refrigerator to be placed in the unit prior to the HQS inspection.

## ***ANNUAL/ BIENNIAL HQS INSPECTIONS [24 CFR 982.405(a) and 982.406; Notice PIH 2016-05]***

### *Scheduling the Inspection*

Each unit under HAP contract must be inspected within 24 months of the last full HQS inspection. TDHCA reserves the right to require additional inspections of any owner or any tenant at time.

If an adult family member 18 or older, or family representative cannot be present on the scheduled date, the family should request that the Department reschedule the inspection. The Department and family will agree on a new inspection date that generally should take place within five business days of the originally scheduled date. The Department may schedule an inspection more than five business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the Department will automatically schedule a second inspection. If the family misses two scheduled inspections without the Department's approval, the Department will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12. Inspections within the biennium will represent a cross-section of areas within the jurisdiction and of inspectors.

## ***SPECIAL INSPECTIONS [HCV GB p. 10-30]***

TDHCA will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit. If the reported condition is not life threatening (i.e., the Department would require the owner to make the repairs within no more than 30 calendar days), then the Department will inspect the unit within 15 days of when TDHCA received the complaint.

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

If the annual/ biennial inspection has been scheduled or is due within 30 days of the date the special inspection is scheduled the Department may elect to conduct a full inspection.

### ***QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b), HCV GB p. 10-32]***

HUD requires a PHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

### ***MOVE-OUT INSPECTIONS***

These inspections are performed after the tenant moves out of the unit at the owner's request. The owner and/or the owner's representative will be required to attend the move-out inspection. If the tenant plans to remain in the unit and the HAP contract is going to be canceled, the inspection can be performed with the tenant in place. Move-out inspections substantiate possible damage claim/violation of family obligations. If an owner requests a move-out inspection to substantiate a damage claim/violation of family obligation, the inspection must be completed prior to the work being done that will correct the damage. The owner must request an inspection within five business days of the move-out. The Department may use evidence of pictures to terminate the continuing assistance to the participant because of a family violation.

### ***INSPECTION RESULTS AND RE-INSPECTIONS FOR UNITS UNDER HAP CONTRACT***

#### ***Notification of Corrective Actions***

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, TDHCA will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible.

When life-threatening conditions are identified, the Department will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within **24 hours** of the Department's notice.

When failures that are not life threatening are identified, the Department will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the period within which the failure must be corrected. Generally, not more than **30 days** will be allowed for the correction.

The notice of inspection results will inform the owner that if life threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or

any Department-approved extension), the owner's HAP will be abated in accordance with Department policy (see 8-II.G).

Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified period (or any Department-approved extension, if applicable) the family's assistance will be terminated in accordance with Department policy (see Chapter 12).

#### *Extensions [24 CFR 982.404].*

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

Extensions will be granted in cases where the Department has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

- A repair cannot be completed because required parts or services are not available.
- A repair cannot be completed because of weather conditions.
- A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case-by-case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided. The request must be submitted prior to the expiration date of the initial correction date.

#### *Re-inspections*

Re-inspections may be performed by the Department staff for verifying that deficiencies noted in the previous inspection has been corrected and meet HQS standards by the end of the corrective period or any Department approved extension.

The family and owner will be given reasonable notice of the re-inspection appointment. If the deficiencies have not been corrected by the time of the re-inspection, the Department will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with Department policies. If the Department is unable to gain entry to the unit in order to conduct the scheduled re-inspection, the Department will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

TDHCA is required to conduct a follow-up inspection if the unit does not pass HQS pursuant to the Initial Inspection. The follow-up is to determine whether all deficiencies during the initial inspection were corrected within the timeframe. Annual or special re-inspections may be verified by the Department staff or remotely by providing the following conditions:

- Self-Certification/ Tenant confirmation
- Photos of the HQS deficiency
- Receipt(s) for work complete has been corrected. The regulation at 982.404(a) (3) states that TDHCA "verifies" HQS repairs.

TDHCA may accept an owner's certification that required repairs were completed and then verify that action at the next on-site inspection. Further, a PHA might tie the verification process to the severity of corrections needed and/or its experience with the owner and property.

### ***ENFORCING OWNER COMPLIANCE***

If the owner fails to maintain the dwelling unit in accordance with HQS, TDHCA will take prompt and vigorous action to enforce the owner obligations.

#### *HAP Abatement*

If an owner fails to correct HQS deficiencies by the time specified by TDHCA, HUD requires TDHCA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.2(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

The Department will make all HAP abatements effective the first of the month following the expiration of the Department specified correction period (including any extension).

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

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

#### *HAP Contract Termination*

TDHCA will decide how long any abatement period will continue before the HAP contract will be terminated. TDHCA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. TDHCA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

The maximum length of time that HAP may be abated is 60 days. However, if the owner completes corrections and notifies the Department before the termination date of the HAP contract, the Department may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

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

### ***ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]***

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by TDHCA (and any extensions), TDHCA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

### ***HQS SELF-CERTIFICATION OF FAILED ITEMS***

As per HUD Notice 2012-15 Streamlining Administrative Practices in the Housing Choice Voucher Program, PHAs are allowed to accept an owner's certification, a receipt from a vendor, or a photo of the repair or tenant confirmation that required repairs are complete.

The Department will accept self-certification for repaired fail items in the form of receipts of the HQS Self-Certification form, and photos, or video of the repaired item.

1. The Department may accept self-certification from an owner provided there is no history of non-compliance by the owner

- The repair can be documented to the Department's satisfaction with a photo or receipt; or
- The repair is documented in a written statement/receipt from the qualified contractor or repair person or licensed professional (i.e. exterminator) that performed the repair; or
- There is evidence from a utility company that service has been restored, or an appliance (i.e. stove or heater) is functioning properly.

2. The Department will not accept self-certification of repairs:

- That are emergency fail items (electrical); or
- That are related to life-safety systems (smoke detectors and carbon monoxide detectors)

The Department reserves the right to require a re-inspection on any and all units with fail items, regardless of whether landlords submit self-certification documentation, and to deny the option of self-certification (and require a re-inspection) where any question remains regarding the integrity of the documentation provided, where there is not full documentation (i.e. fail items where no receipts or other evidence reflect repair), or where landlord/property has a repeated history of regular/repeat fails in the past.

### **PART III: RENT REASONABLENESS [24 CFR 982.507]**

#### ***OVERVIEW***

No HAP contract can be approved until TDHCA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

#### ***Department's employee/Representative-owned Units***

When a Department staff owns property in which a Department HCV tenant resides or will reside, a qualified inspector must determine rent reasonableness in accordance with program requirements, and assist the family in negotiating the contract rent when the family requests assistance. If the Department utilizes a non-affiliated inspector to conduct the rent reasonableness, they must communicate the results of their determination to the family and the Department. An employee of the Department's owned unit is defined as a unit that is owned by the a Department staff (or a separate agency that also employees the staff that administers the HCV assistance to a family.

## **WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED IN EACH OF THE FOUR INSTANCES**

### *Before Executing a HAP Contract*

A PHA must not execute a HAP contract until it has documented that the charged rent is reasonable.

### *Before Any Increase in the Rent to Owner*

Before TDHCA may approve any rent increase to the owner, TDHCA will determine and document whether the proposed rent is reasonable compared to similar units in the marketplace and not higher than those paid by unassisted tenants on the premises.

### *Ten Percent or More Reduction in FMR*

A rent reasonableness determination is required when there is a 10% decrease in the published FMR (for the unit size rented by the family) in effect 60 days before the contract anniversary date as compared with the FMR in effect one year before the contract anniversary date. An FMR will never decrease by more than 10% from the previous year's FMR. This provision is designed to ensure that when the market goes down by a significant amount, TDHCA will reexamine rent reasonableness at the contract anniversary date, even if the owner does not propose a rent increase. When determining if this provision applies, TDHCA will compare the FMR in effect 60 days prior to the upcoming HAP contract anniversary date with the FMR in effect one year before the upcoming anniversary date.

The market areas for rent reasonableness are census tracts and/or neighborhoods within 30 miles of the target unit to the extent possible and depending on the availability of comparable units. Subject units within a defined housing market area will be compared to similar units within the same area.

### *If Directed by HUD*

If HUD has reason to question TDHCA's system or the accuracy of the determination, HUD may require TDHCA to conduct rent reasonableness reviews on all or a portion of its units. In addition to the four instances cited above, TDHCA may at its discretion also determine rent reasonableness at any other time. At all times during the assisted tenancy, the rent to the owner may not exceed the most recently determined or re-determined reasonable rent amount.

## **HOW COMPARABILITY IS ESTABLISHED**

### *Factors to Consider*

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. TDHCA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age (within 30 miles of the target unit to the extent possible.)
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made.
- Amenities, services, and utilities included in the rent

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

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

Note: Notice PIH 2011-46 issued August 17, 2011, provides further guidance on the issue of what constitutes an assisted unit.

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

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than four units.

By accepting TDHCA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give TDHCA information regarding rents charged for other units on the premises. Information is gathered on unassisted rental units in TDHCA's market area, and each unit is rated, using TDHCA's rent reasonableness system. Using an automated method, the average rents are identified for units of like size and type within the same market area.

Attempts will be made to localize the unit within the same census tract or the adjoining census tract. As many defined factors of the items listed above on the unit to be assisted will be compared, to those factors of comparable unassisted units in the database. The average will be adjusted up or down based on the estimated dollar value of the comparable items in comparison with the total database. The unit and the comparables shall be maintained in the file.

## **PHA RENT REASONABLENESS METHODOLOGY**

### *How Market Data is Collected*

The Department will collect and maintain data on market rents in the Department's jurisdiction on an annual basis. The information will be gathered utilizing the Data Collection Form for Unassisted Rental Units provided by the Department. To gather information about unassisted units the Department will utilize sources that include newspapers, tax appraisal districts, rental publications from supermarkets, realtors, management agents, market surveys, inquiries of owners and other available sources. The data will be maintained in the Department's office for reference. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

### *How Rents are Determined*

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. The Department will compare at least two comparable units in the private unassisted market to the contract property utilizing the data collection form. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the Department may make adjustments to the range of prices to account for these differences.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference – not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rents units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly.

For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows:  $\$500 \times 11 \text{ months} = 5500 / 12 \text{ months} = \text{actual monthly rent of } \$488$ .

The Department will notify the owner of the rent the Department can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The Department will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within five business days of the Department's request for information or the owner's request to submit information

## **EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS**

Note: This document provides an overview of HQS. For more detailed information, see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

### **Sanitary Facilities**

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

### **Food Preparation and Refuse Disposal**

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

### **Space and Security**

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

### **Thermal Environment**

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

### **Illumination and Electricity**

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

### **Structure and Materials**

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

### **Interior Air Quality**

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one open able window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

## **EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS cont.**

### **Water Supply**

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

### **Lead-Based Paint**

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children less than six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by TDHCA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance, ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by TDHCA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

### **Access**

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

### **Site and Neighborhood**

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

### **Sanitary Condition**

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

### **Smoke Detectors**

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If any person with a hearing impairment occupies the dwelling unit, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

### **Hazards and Health/Safety**

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

**EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS  
RELATED TO HOUSING QUALITY**

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information, see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
  - *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
  - *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
  - *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
  - *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- (6) *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- (7) *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- (8) *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- (9) *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards, smoke and carbon monoxide detectors.

## CHAPTER 9: GENERAL LEASING POLICIES

### INTRODUCTION [24 CFR 982.305(a)]

This Section covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract. TDHCA's program operations are designed to utilize available resources in a manner that is efficient and provides eligible families timely assistance based on the number of units that have been budgeted. TDHCA's objectives include maximizing HUD funds by providing assistance to as many eligible families and for as many eligible units as the budget will allow.

After families are issued a voucher, they may search for a unit anywhere within the jurisdiction of PHA, or outside of PHA's jurisdiction if they qualify for portability. The family must find an eligible unit under the program rules, with an owner/landlord who is willing to enter into a Housing Assistance Payments Contract with PHA. This Chapter defines the types of eligible housing, PHA's policies that pertain to initial inspections, lease requirements, owner disapproval, and the processing of Requests for Approval of Tenancy (RFTA).

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

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

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by TDHCA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by TDHCA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40% of the family's monthly adjusted income [24 CFR 982.305(a)]

### **TENANT SCREENING**

TDHCA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

TDHCA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of TDHCA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, TDHCA will inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a) (2)].

TDHCA will provide the owner with the family's current and prior address (as shown in TDHCA records); and the name and address (if known to TDHCA) of the landlord at the family's current and prior address. [24 CFR 982.307 (b) (1)].

TDHCA is permitted, but not required, to offer the owner other information in TDHCA's possession about the family's tenancy [24 CFR 982.307(b)(2)].

TDHCA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b) (3)].

The Department will not screen applicants for family behavior or suitability for tenancy.

The Department will not provide additional screening information to the owner.

### ***REQUESTING TENANCY APPROVAL [Form HUD-52517]***

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request TDHCA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to TDHCA:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- The proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A
- W9 Form, required
- Direct Deposit Form, required
- Recorded Deed, if applicable
- Management Agreement, if applicable

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

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

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

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

Both the RTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

The RTA must be signed by both the family and the owner. The owner may submit the RTA on behalf of the family. A completed RTA (including the proposed dwelling lease) may be submitted in-person, by mail, fax, or by email (pdf).

The family may not submit more than one (1) RTA at a time. Once, the family submits the RTA the Department will review the RTA for completeness. If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RTA, the Department will notify the family and the owner of the deficiencies.

Missing information and/or missing documents may be accepted in-person, by mail, fax, or email (pdf). The Department will not accept missing information over the phone.

When the family submits the RTA and proposed lease, the Department will also review the terms of the RTA for consistency with the terms of the proposed lease.

If the terms of the RTA are not consistent with the terms of the proposed lease, the Department will notify the family and the owner of the discrepancies.

Corrections to the terms of the RTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. The Department will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the Department will attempt to communicate with the owner and family by phone, fax, or email. The Department will use mail when the parties cannot be reached by phone, fax, or email.

### **OWNER PARTICIPATION**

TDHCA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where TDHCA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]. See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

### **ELIGIBLE UNITS**

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in TDHCA's jurisdiction. This includes the dwelling unit they are currently occupying.

#### *Ineligible Units [24 CFR 982.352(a)]*

TDHCA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

#### *PHA-Owned Units [24 CFR 982.352(b)]*

Otherwise eligible units that are owned or substantially controlled by TDHCA issuing the voucher may also be leased in the voucher program. In order for a PHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and TDHCA will inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a PHA-owned unit without any pressure or steering by TDHCA.

The Department does not have any PHA-owned units available for leasing under the voucher program.

### *Special Housing Types [24 CFR 982 Subpart M]*

HUD regulations permit, but do not generally require, TDHCA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that TDHCA has chosen to allow.

The regulations do require TDHCA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

### *Duplicative Assistance [24 CFR 982.352(c)]*

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

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

### *Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]*

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

### *Unit Size*

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR §982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

*Rent Reasonableness [24 CFR §982.305 and 24 CFR §982.507]*

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

*Rent Burden [24 CFR §982.508]*

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the dwelling unit rent must be at a level where the family's share of rent does not exceed 40% of the family's monthly-adjusted income. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

**LEASE AND TENANCY ADDENDUM**

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; TDHCA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

*Lease Form and Tenancy Addendum [24 CFR 982.308]*

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added word-for-word to the owner's standard lease form, for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by TDHCA. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

The Department does not provide a model or standard dwelling lease for owners to use in the HCV program.

*Lease Information [24 CFR 982.308(d)]*

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

- The names of the owner, tenant and all family members;
- The unit rented (address, apartment number, and any other information needed to identify the contract unit);
- The term of the lease (initial term and any provisions for renewal);
- The amount of the monthly rent to owner, and;
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family.

### *Term of Assisted Tenancy [24 CFR 982.309]*

- The initial term of the assisted dwelling lease must be for at least one year. The initial lease term is also stated in the HAP contract. The Department will not approve an initial lease term of less than one year except as a reasonable accommodation or as part of a VAWA transfer. During the initial term of the lease, the owner may not raise the rent to the tenant [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist. TDHCA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

### *Security Deposit [24 CFR 982.313 (a) and (b)]*

The owner may collect a security deposit from the tenant. The Department will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

### *Separate Non-Lease Agreements between Owner and Tenant*

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus TDHCA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

The Department permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family.

These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

### *PHA Review of Lease*

TDHCA will review the dwelling lease for compliance with all applicable federal requirements.

If the dwelling lease is incomplete or incorrect, the Department will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. The Department will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, the Department will attempt to communicate with the owner and family by phone, fax, or email. The Department will use mail when the parties cannot be reached by phone, fax, or email.

The Department will not review the owner's lease for compliance with state/local law.

### **TENANCY APPROVAL [24 CFR 982.305]**

After receiving the family's Request for Tenancy Approval (RTA), with proposed dwelling lease, TDHCA will promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, TDHCA will ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by TDHCA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40% of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by TDHCA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

When a family finds a unit, and the owner is willing to lease the unit under the program, the family may request the Department to approve the lease and unit.

### **Property owners cannot participate in the program if they are disapproved by the Department.**

If the Department determines that a unit which an eligible family wishes to lease meets HQS and the proposed lease is approved, the Department representative shall notify the owner and the family of its determination of lease approval.

After receiving notification from the Department, the owner and the Department shall schedule a meeting and execute and sign the contract. After the contract is executed, the owner and family shall execute and sign the lease and provide a copy to the Department.

The Department shall retain the following in its files:

- The RTA form;
- The approved lease;
- Inspection report;
- The Department certification of the current rent being charged for comparable units in the private unassisted market, taking into account the location, size, type, quality, amenities, facilities and management and maintenance service of such unit. This certification will be maintained for three years to comply with HUD regulations and HUD inspection; and
- Executed contract.

If the Department determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The Department will instruct the owner and family of the steps that are necessary to approve the tenancy.

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

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), the Department will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

**SUSPENSION OF SEARCH TIME**

Upon receipt of the Request for Lease approval form from the family, the Department will stop the clock on (Suspend) the voucher term. The suspension time will equal the number of days it takes the Department to approve or deny the request for lease approval. The suspension of time is also called “tolling”.

Toll Time Example	
Voucher Issued: May 1 Expiration Date: June 29	Family Submits RTA: May 15 PHA Denies Unit: May 24
Tolling Time: 9 Days (May 16-24) New Voucher Expiration Date: July 8 (June 29 + 9 days)	

**CONTRACT EXECUTION [24 CFR 982.305]**

The HAP contract is a written agreement between TDHCA and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, TDHCA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements. HUD prescribes the HAP contract format.

If TDHCA has given approval for the family of the assisted tenancy, the owner and TDHCA execute the HAP contract. TDHCA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

TDHCA will make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

TDHCA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, TDHCA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60-day period is void, and TDHCA may not pay any housing assistance payment to the owner.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the Department. The Department will ensure that both the owner and the assisted family receive copies of the dwelling lease.

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

See Chapter 13 for a discussion of the HAP contract and contract provisions.

### ***CHANGES IN LEASE OR RENT [24 CFR 982.308]***

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give TDHCA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless TDHCA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
- Changes in lease provisions governing the term of the lease, and;
- The family moves to a new unit, even if the unit is in the same building or complex.

In these cases, if the HCV assistance is to continue, the family must submit a new RTA along with a new dwelling lease containing the altered terms. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of rent, the owner must notify TDHCA of any changes in the amount of the rent to owner at least 60 days prior to the anniversary date of the HAP contract and the change must be approved by TDHCA before any such changes go into effect [24 CFR 982.308(g)(4)]. TDHCA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or give the family notice in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

TDHCA and tenant must receive owner notification of any request to increase the amount of rent at least 60 days before the changes go into effect. Any rent increase made after the initial term of the lease (12 months), will require a Rent Reasonableness review. Once the rent increase has been approved, a renewal lease will be required with both signatures. Each year, a renewal lease will be required. Contract rents may be adjusted by the Department on an annual basis or special adjustments as provided below:

*Annual Adjustment* – Upon request from the owner to the LO/ Department, and tenant, an annual adjustment may be made if the contract unit is in decent, safe and sanitary condition, the owner is in compliance with the terms of the lease and HAP contract. Additional reasons for a rental increase are as followed:

- Property taxes increased

- Insurance cost increased
- Maintenance items and or improvements were made

*Special Adjustment* – Subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the owner clearly demonstrates that such general increases have caused increases in the owner’s operating costs which are not adequately compensated for by the annual adjustment provided for in (1) above in this section. The owner shall submit financial statements to the Department which clearly support the increase.

Contract rents will not be adjusted by the Department on an annual basis for the following reasons:

- Increase in the volume of Section 8 HCV paperwork
- Protection against damages likely to be caused by Section 8 or lower income families
- In cases where the Department disapproves an owner’s request for a contract rent increase, the Department will notify the owner and the family in writing and will state the reason for not approving the increase. Should an owner insist on the increase requested, the Department will notify the family and the owner that assistance will be terminated. The family will be offered a new voucher to relocate.

# Chapter 10: MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

## INTRODUCTION

Freedom of choice is a hallmark of the housing choice voucher (HCV) program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and PHA policies governing moves within or outside TDHCA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under TDHCA's HCV program, whether the family moves to another unit within TDHCA's jurisdiction or to a unit outside TDHCA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into TDHCA's jurisdiction. This part also covers the special responsibilities that TDHCA has under portability regulations and procedures.

## PART I: MOVING WITH CONTINUED ASSISTANCE

### ALLOWABLE MOVES

HUD regulations list five conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give TDHCA a copy of the notice at the same time [24 CFR 982.314(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)].
- The Violence Against Women Reauthorization Act of 2013 provides that "a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been a victim of domestic violence, sexual violence, dating violence, sexual assault or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit." If the family and the owner mutually agree to terminate the lease for the family's unit, both parties must complete and submit a Tenant/Landlord Agreement Not to Renew 60-days before the lease expires.
- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give TDHCA a copy of any owner eviction notice [24 CFR 982.551(g)].
- TDHCA has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].

TDHCA determines that the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, TDHCA will issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, TDHCA will terminate the HAP contract for the family's old unit in

accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which TDHCA gives notice to the owner. [24 CFR 982.403(a) and (c)].

### ***RESTRICTIONS ON MOVES***

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which a PHA may deny a family permission to move and two ways in which a PHA may restrict moves by a family.

#### ***Denial of Moves***

HUD regulations permit TDHCA to deny a family permission to move under the following conditions:

##### *Insufficient Funding* [24 CFR 982.314(e)(1)].

TDHCA may deny a family permission to move if TDHCA does not have sufficient funding for continued assistance.

The Department will deny a family permission to move on grounds that the Department does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the Department; (b) the Department can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) the Department can demonstrate, through a detailed cost-reduction plan based on reasonable assumptions, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs. This policy applies to moves within the Department's jurisdiction as well as to moves outside it under portability.

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

TDHCA has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)]. If the Department has grounds for denying or terminating a family's assistance, the Department will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances.

##### *Restrictions on Elective Moves* [24 CFR 982.314(c)]

HUD regulations permit TDHCA to prohibit any elective move by a participant family during the family's initial lease term. They also permit TDHCA to prohibit more than one elective move by a participant family during any 12-month period.

The Department will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the Department's jurisdiction or outside it under portability.

The Department will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the Department's jurisdiction. This also means that most families will not be given permission to move until their Annual Reexamination appointment.

The Department will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, and witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control. For a family to be able to move under one of the above reasons, the family must provide the Department with proper

documentation to support the need to move (e.g., inspection report, neighborhood report, police report, employment offer letter, official school documentation, etc.).

In addition, the Department will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

## ***MOVING PROCESS***

### *Notification*

If a family wishes to move to a new unit, the family must notify TDHCA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside TDHCA's jurisdiction under portability, the notice to TDHCA will specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2004-12]. The notices must be in writing [24 CFR 982.5].

### *Approval*

Upon receipt of a family's notification that it wishes to move, the Department will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. If the family is requesting to move at any time other than their annual renewal appointment, the Department Regional Coordinator (RC) will notify the family of the Department's decision within fourteen calendar days following receipt of the family's notification.

### *Reexamination of Family Income and Composition*

For families approved to move to a new unit within the Department's jurisdiction, the Department will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into a unit or families approved to move out of the Department's jurisdiction under portability, the Department will follow the policies set forth in Part II of this chapter.

### ***Voucher Issuance and Briefing***

For families approved to move to a new unit within the Department's jurisdiction, the Department will issue a new voucher within 10 business days of the Department's written approval to move. No briefing is required for these families. The Department will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the Department approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the Department's jurisdiction under portability, the Department will follow the policies set forth in Part II of this chapter.

### *Housing Assistance Payments [24 CFR 982.311(d)]*

When a family moves out of an assisted unit, TDHCA may not make any housing assistance payment to the owner for any month after the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit.

Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

## **PART II: PORTABILITY**

### ***OVERVIEW***

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

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

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. TDHCA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

### ***INITIAL PHA ROLE***

#### *Allowable Moves under Portability*

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside TDHCA's jurisdiction under portability. The initial PHA, in accordance with HUD regulations and PHA policy, determines whether a family qualifies.

#### *Applicant Families*

Under HUD regulations, most applicant families qualify to lease a unit outside TDHCA's jurisdiction under portability. However, HUD gives TDHCA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance.

The Department will accept ported vouchers within our jurisdiction but only if the initial PHA releases the voucher and enables the permanent absorption by TDHCA.

In determining whether or not to deny an applicant family permission to move under portability because the Department lacks sufficient funding or has grounds for denying assistance to the family, the Department will follow the policies established in section 10-I.B of this chapter.

In addition, TDHCA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

If neither the head of household nor the spouse/co-head of an applicant family had a domicile (legal residence) in the Department's jurisdiction at the time the family's application for assistance was submitted, the family must live in the Department's jurisdiction with voucher assistance for at least 12 months before requesting portability. The Department will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2). However, any exception to this policy is subject to the approval of the receiving PHA.

#### *Participant Families*

The Initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. [24 CFR 982.3539b).]

The Department will determine whether a participant family may move out of the Department's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. The Department will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

#### *Determining Income Eligibility*

*Applicant Families.* An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d) (3)]. The family must specify the area to which the family wishes to move [Notice 2004-12]. The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c) (1)]. If the applicant family is not income eligible in that area, TDHCA will inform the family that it may not move there and receive voucher assistance [Notice PIH 2004-12].

*Participant Families:* The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d) (2), 24 CFR 982.355(c) (1)].

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

No new reexamination of family income and composition is required for an applicant family.

For a participant family approved to move out of its jurisdiction under portability, the Department generally will not conduct a reexamination of family income and composition unless the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

The Department will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

#### *Briefing*

The regulations and policies on briefings set forth in Chapter 5 of this plan require TDHCA to provide information on portability to all applicant families that qualify to lease a unit outside TDHCA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

No formal briefing will be required for a participant family wishing to move outside the Department's jurisdiction under portability. However, the Department will provide the family with the same oral and

written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5). The Department will provide the name, address, and phone of the contact for TDHCA in the jurisdiction to which they wish to move. The Department will advise the family that they will be under the receiving PHA's policies and procedures, including subsidy standards and voucher extension policies.

#### *Voucher Issuance and Term [24 CFR 982.353(b)]*

An applicant family has no right to portability until after the family has been issued a voucher. In issuing vouchers to applicant families, the Department will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

For families approved to move under portability, the Department will issue a new voucher within 10 business days of the Department's written approval to move. The initial term of the voucher will be 60 days.

#### *Voucher Extensions and Expiration*

The Department will approve **no** extensions to a voucher issued to an applicant or participant family porting out of the Department's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the Department's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the Department's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of the Department's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

#### *Initial Contact with the Receiving PHA*

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR 982.355(c) (2)]. This means that the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2004-12]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c) (2)].

Because the portability process is time-sensitive, the Department will notify the receiving PHA by phone, fax, or e-mail to expect the family. The Department will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, e-mail and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance.

The Department will pass this information along to the family. The Department will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

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

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2004-12]
- A copy of the family's voucher [Notice PIH 2004-12]

- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2004-12]
- Copies of the income verifications backing up the form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2004-12]
- Notification to confirm if TDHCA is billing or absorbing.

In addition to these documents, the Department will provide the following information, if available, to the receiving PHA:

- Last EIV print out
- Social security numbers (SSNs);
- Documentation of SSNs for all family members age 6 and over;
- Documentation of legal identity;
- Documentation of citizenship or eligible immigration status;
- Documentation of participation in the earned income disallowance (EID) benefit;
- Documentation of participation in a family self-sufficiency (FSS) program.

The Department will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

#### *Initial Billing Deadline [Notice PIH 2004-12]*

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

If the Department has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail on the next business day. If the Department reports that the family is not yet under HAP contract, the Department will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family.

The Department will send the receiving PHA a written confirmation of its decision by mail.

The Department will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

#### *Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2004-12]*

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. The receiving PHA must receive subsequent payments no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of over leasing or funding shortfalls. TDHCA will manage its tenant-based

program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

The Department will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the Department that direct deposit is not acceptable to them.

#### *Annual Updates of Form HUD-50058 and 52665*

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 and 52665 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 and 52665 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family.

#### *Subsequent Family Moves*

- *Within the Receiving PHA's Jurisdiction [24 CFR 314(e)(1), Notice PIH 2005-1].* The initial PHA has the authority to deny subsequent moves by portable families whom it is assisting under portability billing arrangements if it does not have sufficient funding for continued assistance.

If the Department determines that it must deny moves because it lacks sufficient funding (see section 10-I.B), it will notify all receiving PHAs with which it has entered into portability billing arrangements that they, too, must deny moves to higher cost units by portable families from the Department's jurisdiction.

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

- *Outside the Receiving PHA's Jurisdiction [Notice PIH 2004-12].* If the initial PHA is assisting a portable family under a billing arrangement and the family subsequently decides to move out of the receiving PHA's jurisdiction, the initial PHA is responsible for issuing the family a voucher while the family is either being assisted or has a voucher from the receiving PHA and, if the family wishes to port to another jurisdiction, sending form HUD-52665 and supporting documentation to the new receiving PHA. Any extensions of the initial PHA voucher necessary to allow the family additional search-time to return to the initial PHA's jurisdiction or to move to another jurisdiction would be at the discretion of the initial PHA.

#### *Denial or Termination of Assistance [24 CFR 982.355(c)(9)]*

If the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the initial PHA may act on those grounds at any time. (For PHA policies on denial and termination, see Chapters 3 and 12, respectively.)

#### **RECEIVING PHA ROLE**

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)].

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

### *Initial Contact with Family*

When a family moves into TDHCA's jurisdiction under portability, the family is responsible for promptly contacting TDHCA and complying with TDHCA's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2004-12].

When a portable family requests assistance from the receiving PHA, the receiving PHA must promptly inform the initial PHA whether the receiving PHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)].

If the receiving PHA initially bills the initial PHA for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2004-12]. (See later under "Absorbing a Portable Family" for more on this topic.)

The Department will promptly inform the initial PHA if it intends to absorb or bill. The Department sends Part II of HUD Form 52665 to the initial PHA. If the Department decides to bill the initial PHA, the Department not only completes Part II of HUD Form 52665, but also attaches a copy of the new HUD form 50058 before returning it to the initial PHA. In addition to the initial billing deadline discussed above, the instructions of the HUD Form 52665 provide that the Department will complete and mail (which may include electronic mail or fax) Part II of the form within 10 working days from the date a HAP contract is executed on behalf of a family.

The Department conducts a background screening on every person 18 years or older listed by the Head of Household.

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2004-12]. (For more on this topic, see later under "Denial or Termination of Assistance.")

### *Briefing*

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2004-12].

The Department will not require the family to attend a briefing. The Department will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about the Department's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

### *Income Eligibility and Reexamination*

For any family moving into its jurisdiction under portability, the Department will conduct a new reexamination of family income and composition [24 CFR 982.355(c)(4)]. However, the Department will not delay issuing the family a voucher for this reason [Notice PIH 2004-12, 24 CFR 982.201(b)(4)]. Nor will the Department delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the Department cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located. The receiving PHA does not re-determine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(1)].

In conducting its own reexamination, the Department will rely upon any verification provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

### ***Voucher Issuance***

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(b) (6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c) (6)].

### ***Timing of Voucher Issuance***

When a family ports into the Department's jurisdiction, the Department will generally issue the family a voucher within 10 business days, if the family paperwork is on time, complete, the voucher from the initial PHA has not expired and the family complies with all the Department's procedures. [Notice PIH 2004-12]. The Department will update the family's information when verification has been completed.

### ***Voucher Term***

The term of the receiving PHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c) (6)]. The Department's voucher will expire on the same date as the initial PHA's voucher.

### ***Voucher Extensions [24 CFR 982.355(c)(6), Notice 2004-12]***

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

The Department generally will not extend the term of the voucher that it issues to an incoming portable family unless the Department plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

The Department will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

### ***Notifying the Initial PHA***

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e)(5), Notice PIH 2004-12]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher,")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case, the voucher of record for the family is once again the voucher originally issued by the initial PHA.

Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction. [Notice PIH 2004-12]

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

#### *Initial Billing Deadline*

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the receiving PHA executes a HAP contract on behalf of the family and (b) in time that the notice will be received no later than 90 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2004-12]. A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

The Department will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is over leased) [Notice PIH 2004-12].

#### *Special Purpose Vouchers:*

The receiving PHA must maintain any special purpose voucher codes (i.e. VASH, NED) on line 2n of the form 50058.

#### *Ongoing Notification Responsibilities [Notice PIH 2004-12, HUD-52665]*

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

The Department will send a copy of the updated HUD Form 50058 and 52665 by regular mail, fax or secure email at the same time the family and owner are notified of the reexamination results.

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

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

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount.

### *Late Payments [Notice PIH 2004-12]*

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency.

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

### *Overpayments [Notice PIH 2004-12]*

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

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

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

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2004-12.

### *Denial or Termination of Assistance*

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(10)].

In the case of a termination, TDHCA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement. [Notice PIH 2004-12]

If the Department elects to deny or terminate assistance for a portable family, the Department will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. The Department will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The Department will furnish the initial PHA with a copy of the review or hearing decision.

### *Absorbing a Portable Family*

The receiving PHA may absorb an incoming portable family into its own program when TDHCA executes a HAP contract on behalf of the family or at any time thereafter providing that (a) TDHCA has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in over leasing [24 CFR 982.355(d)(1), Notice PIH 2004-12].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b) (2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family. [Notice PIH 2004-12]

If the Department decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the Department will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If the Department decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability.

# Chapter 11: REEXAMINATIONS

## INTRODUCTION

In accordance with HUD requirements, TDHCA will reexamine the income and household composition of all families at least annually. Families will be provided accurate annual and interim rent adjustments. Recertifications and interim examinations will be processed in a manner that ensures families are given reasonable notice of rent increases. All annual activities will be coordinated in accordance with HUD regulation. It is a HUD requirement that families report all changes in household composition. It also explains the interim reporting requirements for families, and the standards for timely reporting. Interim reexaminations are also needed in certain situations.

This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and PHA's policies concerning reexaminations are presented in three parts:

Part I: Annual and Triennial Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

## **PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]**

### **OVERVIEW**

TDHCA will conduct a reexamination of family income and composition on an annual, biennial, or triennial basis depending on the type of income. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated annually or for streamlined recertification's, by applying a verified cost of living adjustment (COLA) to fixed income annually for up to three years. TDHCA will conduct a reexamination once every three years (triennially) for all fixed sources of income. Fixed income consists solely of periodic payments at reasonable predictable levels. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

### **B. SCHEDULING ANNUAL REEXAMINATIONS**

TDHCA will establish a policy to ensure that the annual reexamination for each family is completed *within* a 12-month period, and may require reexaminations more frequently [HCV GB p. 12-1].

The Department will begin the annual reexamination process 120 days in advance of its scheduled effective date to coincide with the family's anniversary date. *Anniversary date* is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission). Records shall be maintained by the Department to insure that every participant's income and family composition has been

re-examined within a twelve-month period. If the family moves to a new unit, the Department will perform a new annual reexamination.

The Department may also conduct streamlined re-examination of income for elderly families and disabled families when 100% of the family's income consists of fixed income. The Department will recalculate family incomes by applying any published cost of living adjustments to the previously verified income amount. For purposes of this streamlined process, the term "fixed income" includes income from:

- 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.

#### *Notification of and Participation in the Annual Reexamination Process*

TDHCA is required to obtain the information needed to conduct annual reexaminations. How the information will be collected is left to the discretion of TDHCA.

Families generally are required to participate in an annual reexamination interview. Interviews may be conducted face-to-face or mail-in. The head of household, spouse, co-head must participate the briefing. If participation poses a hardship because of a family member's disability, the family should contact the Department to request a reasonable accommodation (see Chapter 2).

Notification of the annual reexamination briefing/ interview will be sent by mail from the Department 120 days prior to the families' annual reexamination date. The notification will inform the family of the information and documentation required for the briefing/ interview. In addition, the letter will indicate that the family must contact their LO/ Department to schedule an inspection.

If the family is unable to participate in a scheduled briefing/ interview, the family should contact the LO/ Department prior to the briefing date or deadline to return renewal document. If the family does not contact the Department, an Intent to Terminate notice will be mailed. If the family does not participate in a scheduled briefing/ interview, the LO/ Department will contact them to reschedule an appointment.

If the family fails to participate in **two** scheduled briefings/ interviews without Department approval, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process.

#### **CONDUCTING ANNUAL REEXAMINATIONS**

As part of the annual reexamination process, families are required to provide updated information to TDHCA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

Families will be asked to bring or submit all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a Department-designated Personal Declaration form, an Authorization for the Release of Information/Privacy Act Notice, Child Support printouts, Income and Social Security award letters. Families will also be required to bring any supporting documentation related to the family's income, expenses, family composition, and assets.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required period, the family may request an extension.

If the family does not provide the required documents or information within the required time- frame (plus any extensions), the family will be sent an Intent to Termination Notice (See Chapter 12).

Additionally, HUD recommends that at annual reexaminations PHAs ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state [Notice PIH 2012-28].

At the annual reexamination, TDHCA will ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state. TDHCA will use the Dru Sjodin National Sex Offender database to verify the information provided by the tenant.

If TDHCA proposes to terminate assistance based on lifetime sex offender registration information, TDHCA will notify the household of the proposed action and must provide the subject of the record and the tenant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to termination.

The Annual HQS inspection, including follow up re-inspections must be completed and submitted with the Annual Reexamination/Moving packets to the RC prior to the renewal date.

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity;
- Age;
- Social security numbers;
- A person's disability status; and
- Citizenship or immigration status.

If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (HQS) (see Chapter 8), TDHCA will issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, TDHCA will terminate the HAP contract in accordance with its terms [24 CFR 982.403].

### ***DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]***

Section 327 of Public Law 109-115 established new restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education. If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from his or her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

During the annual reexamination process, TDHCA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), TDHCA will process a reexamination in accordance with the policies in this chapter.

### **EFFECTIVE DATES**

TDHCA will establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

An *increase* in the family share of the rent that results from an annual reexamination will take effect on the 1<sup>st</sup> day of the family's anniversary date, and the family will be notified, in writing, at least 30 days in advance. If notice is not mailed timely, TDHCA will absorb the families increase portion for the month of the effective date.

Copies of such notifications will be retained in the participants file for (1) any change in rent and the date on which it becomes effective and (2) any change required because of a change in the composition of the family.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively to the scheduled effective date of the annual reexamination. The family will be responsible for any decrease that may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the Department by the date specified, and this delay prevents the Department from completing the reexamination as scheduled.

### *Reexamination Notice to the Family*

TDHCA will maintain a reexamination tracking system and the household will be notified by mail of the date and time for their interview at least 90 – 120 calendar days in advance of the anniversary date, unless it has been rescheduled or file reinstated. TDHCA has developed a computerized tracking report to ensure all annual re-certifications are completed prior to the last annual date.

If requested as an accommodation by a person with a disability, TDHCA will provide the notice in an accessible format. TDHCA will also mail the notice to a third party, if requested as reasonable accommodation for a person with disabilities. These accommodations will be granted upon verification that they meet the need presented by the disability.

### *Completion of Annual Recertification*

TDHCA will have all re-certifications for families completed before the anniversary date. This includes notifying the family of any changes in rent at least 30 days before the scheduled date of the change in family rent.

### *Collection of Information [24 CFR 982.516(f)]*

TDHCA has established appropriate recertification procedures necessary to ensure that the income data provided by families is complete and accurate. TDHCA will require the family to complete an application for Continued Occupancy form prior to all recertification interviews.

## **PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]**

### ***OVERVIEW***

Family circumstances may change throughout the period between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances TDHCA will process interim reexaminations to reflect those changes. HUD regulations also permit TDHCA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. TDHCA will complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how TDHCA will process both PHA- and family-initiated interim reexaminations.

### ***CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION***

TDHCA will adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to family obligations under the program, TDHCA has limited discretion in this area.

The Department will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations. Any income tied to the addition of the child/children to the household that should be included will be counted at the effective date.

*New Family Members Not Requiring Approval [24 CFR 982.551(h)(2)].*

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify TDHCA of the addition.

The family must inform the Department of the birth, adoption or court-awarded custody within 10 business days, but may request additional time. A family must request PHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)]. However, documentation required for guardianship is:

- Court-ordered assignment
- School records
- Verification from Social Services agency/ Supplemental Nutrition Assistance Program (SNAP) showing family members
- Self-certification of temporary guardianship or appointment from parent

*New Family and Household Members Requiring Approval*

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, TDHCA will conduct a reexamination to determine any new income or deductions associated with the additional family member, and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR 982.516(e)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), TDHCA will issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, TDHCA will terminate the HAP contract in accordance with its terms [24 CFR 982.403].

Families must request Department approval to add a new family member, live-in aide, foster child, or foster adult. Any person not on the lease who is expected to stay in the unit longer than 30 consecutive days, or 60 cumulative days, within a twelve-month period, no longer qualifies as a “guest.” Requests must be made in writing and approved by the Department.

Before the Department will consider approval of the new addition to the household, the Department will receive a written letter from the owner of the property approving the addition.

The Department will not approve the addition of a new family or household member unless the individual meets the Department’s eligibility criteria (see Chapter 3).

The Department will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If the Department determines an individual meets the Department’s eligibility criteria as defined in Chapter 3 and the owner approves the new addition, the Department will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued another voucher and will be required to move.

If the Department determines that an individual does not meet the Department’s eligibility criteria as defined in Chapter 3, the Department will notify the family and owner of its decision to deny approval of the new family or household member and the reasons for the denial. In the case where the Department

does not approve the addition of an individual to the household, but the owner does approve of the addition, the Department's ruling will stand.

The Department will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

#### *Departure of a Family or Household Member*

Families must promptly notify TDHCA if any family member no longer lives in the unit.

[24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], TDHCA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

If a household member ceases to reside in the unit, the family must inform the Department within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the Department within 10 business days. (see Chapter 7)

Family members who have been removed from the lease at the family's request may not re-enter the household until the next annual recertification, and then only with TDHCAs permission.

#### **CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because TDHCA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, TDHCA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

#### *PHA-Initiated Interim Reexaminations*

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by TDHCA. They are not scheduled because of changes reported by the family.

The Department will conduct interim reexaminations in each of the following instances:

- For families receiving the Earned Income Disallowance (EID), the Department will conduct an interim reexamination at the start and conclusion of the second 12 month exclusion period (50% phase-in period).
- If the family has reported zero income, the Department will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.

#### *Family-Initiated Interim Reexaminations*

TDHCA will adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)].

### *Required Reporting*

HUD regulations give TDHCA the freedom to determine the circumstances under which families will be required to report changes affecting income.

Families are required to report all increases in earned income for any wage earner 18 years of age or older, including new employment or loss of employment, within 10 business days of the date the change takes effect.

The starting or stopping of, or an increase of or decrease of any benefits or payments received by any member of the family or household from:

1. Old Age Pension;
2. Aid for Dependent Children (TANF);
3. Black Lung;
4. Railroad Retirement;
5. Private Pension Fund;
6. Disability Compensation;
7. Veterans Administration;
8. Child Support;
9. Alimony;
10. Regular Contributions; or
11. Gifts.

Lump sum payments or retroactive payments of benefits from any of the above sources that constitute the sum of monthly payments for a preceding period paid in a lump sum must be reported and rent adjusted retroactively on such income to date of eligibility for any family member residing in the household for that period of time.

Cost of living increases in Social Security or public assistance grants need not be reported until next re-examination and re-determination of rent.

Errors of omission made while admitted to the program shall be corrected at the re-examination. Retroactive payments will be made to the participant if the error is in his/her favor.

A participant who has had a rent reduction/increase after initial occupancy or after annual re-examination must report all changes in income within 10 business days regardless of the amount or source.

The Department will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's share of rent will change as a result of the increase. In all other cases, TDHCA will note the information in the tenant file, but will not conduct an interim reexamination.

Families are not required to report any other changes in income or expenses.

### *Optional Reporting*

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b) (2)]. TDHCA will process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

Families may report changes in income or expenses at any time within 10 business days.

## **PROCESSING THE INTERIM REEXAMINATION**

### *Method of Reporting*

The family may notify the Department of changes in writing. If the family provides oral notice, the Department will require the family to submit the changes in writing.

The family will not be required to attend an interview for an interim reexamination. However, if the Department determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the Department will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from the Department. This time-frame may be extended for good cause with Department approval. The Department will accept required documentation by email, mail, fax, or in person.

Interim increases in Tenant Rent will be made only when:

1. The tenant has misrepresented any facts related to income or deductions from income;
2. The tenant has claimed zero income and has been verified to have cash or non-cash income; or
3. The tenant has experienced an increase in income of at least \$3,000 per year after having received an interim decrease in rent. If yearly income verified thru 3<sup>rd</sup> party verification is less than the minimum yearly amount, the Department will not process the interim change and file the documents in the file.

### *Effective Dates*

TDHCA will establish the periods in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

The family must report changes in income before the 15th of the month in order to have the decreased rent effective for the first of the following month.

If paperwork to process the reduction is not received by the 15th of the month, the decreased rent may not be effective by the first of the following month. Therefore, the family will be responsible for the rent until the change has been processed.

If the family share of the rent is to *increase*:

- The increase generally will be effective on the first of the month following 30 days' notice to the family.
- If a family fails to report a change within the required time-frames, or fails to provide all required information within the required time-frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis.

- The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.
- If the family causes delays in completing an interim re-certification, the Authority may terminate assistance.

If the family share of the rent is to *decrease*: the decrease will be effective on the first day of the month following the month in which the change was reported. All required documentation must be submitted in cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

## **PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT**

### ***OVERVIEW***

After gathering and verifying required information for an annual or interim reexamination, TDHCA will recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

### ***CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES***

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in TDHCA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

#### ***Payment Standards [24 CFR 982.505]***

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When TDHCA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If TDHCA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
  - If the payment standard amount has *increased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
  - If the payment standard amount has *decreased*, the decreased payment standard will be applied at the *second annual* reexamination following the effective date of the decrease in the payment standard.

- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

#### *Subsidy Standards [24 CFR 982.505(c)(4)]*

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in TDHCA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's *first annual* reexamination following the change in family unit size.

#### *Utility Allowances [24 CFR 982.517(d)]*

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in TDHCA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, TDHCA will use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, TDHCA will use TDHCA current utility allowance schedule [24 CFR 982.517(d)(2)].

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination after the allowance is adopted by the Department.

### ***NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT***

TDHCA will notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding TDHCA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

### ***DISCREPANCIES***

During an annual or interim reexamination, TDHCA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, TDHCA may discover errors made by TDHCA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

## Chapter 12: TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a PHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by TDHCA based on the family's behavior.

Part II: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that TDHCA may consider in lieu of termination, the criteria TDHCA will use when deciding what action to take, and the steps TDHCA will take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part presents the policies that govern the owner's right to terminate an assisted tenancy.

### PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

#### **OVERVIEW**

HUD requires TDHCA to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits TDHCA to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying TDHCA.

#### ***FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]***

As a family's income increases, the amount of PHA subsidy goes down. If the amount of HCV assistance provided by TDHCA drops to zero and remains at zero for 180 consecutive calendar days the family's assistance terminates automatically.

If a participating family receiving assistance experiences a change in circumstances that would cause the HAP payment to increase, the family must notify the Department within 30 days of the changed circumstances and request an interim reexamination 30 days before the expiration of the 180-day period.

#### ***FAMILY CHOOSES TO TERMINATE ASSISTANCE***

The family may request that TDHCA terminate the family's assistance at any time.

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or co-head. Before terminating the family's assistance, the Department will follow the notice requirements in Section 12-II.E.

#### ***MANDATORY TERMINATION OF ASSISTANCE***

HUD requires TDHCA to terminate assistance in the following circumstances.

*Eviction [24 CFR 982.552(b)(2), Pub.L. 109-162]*

TDHCA will terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. Incident or incidents of actual or threatened domestic violence, sexual violence, dating violence, sexual assault or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. However, the Department will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-II.C.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises, failure to pay utility bills and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.

All adult members of a family will be provided notice of their Occupancy Rights under VAWA utilizing Form 5380 upon notice of any eviction or program termination.

*Failure to Provide Consent [24 CFR 982.552(b)(3)]*

TDHCA will terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See Chapter 7 for a complete discussion of consent requirements.

*Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]*

TDHCA will terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by TDHCA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

*Failure to Provide Social Security Documentation [24 CFR 5.218(c), Notice PIH-2010-3]*

TDHCA will terminate assistance if a participant family fails to provide the documentation or certification required for any family member and documentation necessary to verify each social security number.

If the family is otherwise eligible for continued program assistance, and TDHCA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, TDHCA may defer the family's termination and provide the opportunity to comply with the requirements within the period not to exceed 90 calendar days from the date TDHCA determined the family to be noncompliant.

TDHCA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for the circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA.

*Methamphetamine Manufacture or Production [24 CFR 983.553(b) (1)(ii)]*

TDHCA will terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.

**MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS**

*Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]*

HUD requires TDHCA to establish policies that permit TDHCA to terminate assistance if TDHCA determines that:

- Any household member is currently engaged and convicted of any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents;
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity; and
- Any household member has violated the family's obligation not to engage in violent criminal activity.
- Any household member has ever been convicted of drug related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

***Use of Illegal Drugs and Alcohol Abuse***

If any household member is currently engaged in, or convicted in any of the following criminal activities, within the past five years, the family will be terminated:

- Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug. This includes the distribution, possession, sale or use of medical marijuana. [24 CFR 5.100].
- Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].
- A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity. A pattern of illegal use of drugs or violent criminal activity, whether established by one or more arrests or one or more convictions of the same or similar criminal activity will be given more weight than a single arrest for such activity.
- A record that an applicant or household member has been paroled or released from a facility for violence to persons or property.
- In making its decision to terminate assistance, the Department will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the Department may, on a case-by-case basis, choose not to terminate assistance.

*Drug-Related and Violent Criminal Activity [24 CFR 5.100]*

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

*Drug-related criminal activity* is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

The Department will terminate a family's assistance if any household member has been convicted of any drug-related or violent criminal activity during participation in the HCV program.

The Department will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, the Department will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the Department may, on a case-by-case basis, choose not to terminate assistance.

#### *Other Authorized Reasons for Termination of Assistance [24 CFR §982.552(c)]*

HUD permits TDHCA to terminate assistance under a number of other circumstances. It is left to the discretion of TDHCA whether such circumstances in general warrant consideration for the termination of assistance.

The Department **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency or Welfare to Work voucher programs.

The Department **will** terminate a family's assistance if:

- The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related PHA policies.
- Any family member has been evicted from federally-assisted housing in the last five years.
- Any PHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs.
- The family has not reimbursed any PHA for amounts TDHCA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- The family has breached the terms of a repayment agreement entered into with the Department.
- The family does not provide complete and true information to TDHCA.
- The family does not provide information that TDHCA or HUD determines is necessary in determining program eligibility.
- The family failed to disclose and verify social security numbers and submit and sign consent forms for obtaining information.
- Has made fraudulent misrepresentation on his/her application for HCV assistance.
- A family member has engaged in or threatened violent or abusive behavior toward Department personnel.

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

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

In making its decision to terminate assistance, the Department will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the Department may, on a case-by-case basis, choose not to terminate assistance under the above list.

#### *Family Absence from the Unit [24 CFR §982.312]*

The family may be absent from the unit for brief periods. TDHCA will establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 90 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

If the family is absent from the unit for more than 90 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with this section.

## **PART II: APPROACH TO TERMINATION OF ASSISTANCE**

### **OVERVIEW**

TDHCA is required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give TDHCA the discretion either to terminate the family's assistance or to take another action.

This part discusses the various actions TDHCA may choose to take when it has discretion, and outlines the criteria TDHCA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

### **METHOD OF TERMINATION [24 CFR 982.552(a)(3)]**

The way in which TDHCA terminates assistance depends upon individual circumstances. HUD permits TDHCA to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.

### **12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE**

#### *Change in Household Composition*

As a condition of continued assistance, TDHCA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c) (2)(ii)]. As a condition

of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon Department request.

#### *Repayment of Family Debts*

If a family owes amounts to the Department, as a condition of continued assistance, the Department will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the Department of the amount owed. No other repayment agreement will be entered upon. See Chapter 16 for policies on repayment agreements.

### **CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE**

#### *Evidence*

For criminal activity, HUD permits TDHCA to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

The Department will use the concept of the preponderance of the evidence as the standard for making all termination decisions. ***Preponderance of the evidence*** is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

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

TDHCA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

The Department will consider the following factors when making its decision to terminate assistance:

- The seriousness of the case, especially with respect to how it would affect other residents;
- The effects that termination of assistance may have on other members of the family who were not involved in the action or failure;
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities;
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future;
- In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully; and
- The Department will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

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

If the family includes a person with disabilities, TDHCA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

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

#### ***TERMINATION NOTICE [HCV GB, p. 15-7]***

If a family's assistance is to be terminated, whether voluntarily or involuntarily, TDHCA will give the family and the owner written notice that specifies:

- The reasons for which assistance has been terminated,
- The effective date of the termination, and
- The family's rights under VAWA utilizing Form 5380
- The family's right to an informal hearing as described in Chapter 16.

If a criminal record is the basis of the termination, a copy of the record must accompany the notice. A copy of the criminal record also must be provided to the subject of the record [24 CFR 982.553(d)].

When the Department initiates termination, the notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination. However, if a family vacates the unit without informing the Department, 30 days notice will not be given. In these cases, the notice to terminate will be sent at the time the Department learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to the Department (see section 12-I.C.). The Department will then send a confirmation notice to the family and the owner no later than the termination effective date (as requested by the family).

#### ***Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]***

TDHCA will terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) TDHCA determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and that they have the right to request an informal hearing with TDHCA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

The notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination.

#### ***HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE***

When the family's assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641]. The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

## **PART III: TERMINATION OF TENANCY BY THE OWNER**

### ***OVERVIEW***

Termination of an assisted tenancy is a matter between the owner and the family; TDHCA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

### ***GROUNDINGS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310 and Form HUD-52641-A, Tenancy Addendum]***

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

#### *Serious or Repeated Lease Violations*

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease. This includes failure to pay rent or other amounts due under the lease. However, TDHCA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

#### *Violation of Federal, State, or Local Law*

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

#### *Criminal Activity or Alcohol Abuse*

The owner may terminate tenancy during the term of the lease if any *covered person*, meaning any member of the household, a guest or another person under the tenant's control commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

#### *Evidence of Criminal Activity*

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction.

#### *Other Good Cause*

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent).

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

#### ***EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]***

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action. The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give TDHCA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give TDHCA a copy of any eviction notice (see Chapter 5).

If the eviction action is finalized in court, the owner must provide the Department with documentation related to the eviction, including notice of the eviction date, as soon as possible following the court-ordered eviction.

#### ***DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h)]***

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The seriousness of the offending action;

- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

#### ***EFFECT OF TERMINATION OF TENANCY ON THE FAMILY'S ASSISTANCE***

If a termination is not due to a serious or repeated violation of the lease, and if TDHCA has no other grounds for termination of assistance, TDHCA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

## **EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS**

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

- The family must supply any information that TDHCA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by TDHCA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest. Damages beyond normal wear and tear will be considered to be damages which could be assessed against the security deposit.
- The family must allow TDHCA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease. The Department will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.

- The family must notify TDHCA and the owner before moving out of the unit or terminating the lease. The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to the Department at the same time the owner is notified.
- The family must promptly give TDHCA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- TDHCA will approve the composition of the assisted family residing in the unit. The family must promptly notify TDHCA in writing of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

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

## EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS cont.

- The family must promptly notify TDHCA in writing if any family member no longer lives in the unit.
- If TDHCA has given approval, a foster child or a live-in aide may reside in the unit. TDHCA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when PHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
- The family must supply any information requested by TDHCA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify TDHCA when the family is absent from the unit. Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to the Department at the start of the extended absence.
- The family must pay utility bills, provide, and maintain any appliances that the owner is not required providing under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and PHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless TDHCA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

# Chapter 13: OWNERS

## INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in TDHCA’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between TDHCA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including PHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

## PART I: OWNERS IN THE HCV PROGRAM

### ***OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]***

#### *Recruitment*

PHAs are responsible for ensuring that very low-income families have access to all types and ranges of affordable housing in TDHCA’s jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for TDHCA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in TDHCA’s jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program.

The Department will conduct owner outreach within its jurisdiction to ensure that owners are familiar with the program and its advantages. The Department will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies may include:

- Distributing printed material about the program to property owners and managers;
- Contacting property owners and managers by phone or in-person;
- Participating in community based organizations comprised of private property and apartment owners and managers; and
- Developing working relationships with owners and real estate brokers associations.

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

## *Retention*

In addition to recruiting owners to participate in the HCV program, TDHCA will also provide the kind of customer service that will encourage participating owners to remain active in the program.

All Department activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

The Department will provide owners with a Landlord handbook that explains the program, including HUD and PHA policies and procedures, in easy-to-understand language.

The Department will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated Department contact person;
- Coordinating inspection and leasing activities between the Department, the owner, and the family;
- Initiating telephone contact with the owner to explain the inspection process and HUD Housing Quality Standards;
- Provide an inspection booklet, other written information how the program operates, and resource materials about HUD housing quality standards; and

Additional services may be undertaken on an as-needed basis, and as resources permit.

## ***BASIC HCV PROGRAM REQUIREMENTS***

HUD requires TDHCA to aid families in their housing search by providing the family with a list of landlords or other parties known to TDHCA who may be willing to lease a unit to the family, or to help the family find a unit. Although TDHCA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to TDHCA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit must notify the Department in their area. The Department will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. TDHCA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to TDHCA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past

history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. TDHCA will inspect the owner's dwelling unit at various stages of HCV program participation, to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.

TDHCA will determine that the cost of the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, TDHCA will determine that the share of rent to be paid by the family does not exceed 40% of the family's monthly adjusted income if the unit's rent exceeds the payment standard [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

TDHCA and the owner enter into a formal contractual relationship by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). HUD prescribes the HAP contract format. See chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this chapter 13.

### ***OWNER RESPONSIBILITIES [24 CFR 982.452]***

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract;
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit;
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance;
- Complying with equal opportunity requirements;
- Preparing and furnishing to TDHCA information required under the HAP contract;
- Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from TDHCA), and any charges for unit damage by the family;

- Enforcing tenant obligations under the dwelling lease;
- Paying for utilities and services (unless paid by the family under the lease); and
- Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203].
- Making appropriate notifications, and providing for applicable rights, under VAWA.

### **OWNER QUALIFICATIONS**

TDHCA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where TDHCA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

#### *Owners Barred from Participation [24 CFR 982.306(a) and (b)]*

TDHCA will not approve the assisted tenancy if TDHCA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct TDHCA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

#### *Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]*

TDHCA will not approve an RTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. TDHCA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

#### *Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]*

TDHCA will not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of TDHCA (except a participant commissioner);
- Any employee of TDHCA, or any contractor, subcontractor or agent of TDHCA, who formulates policy or who influences decisions with respect to the programs;
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; and
- Any member of the Congress of the United States.

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. TDHCA will submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by TDHCA will include [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;

- Analysis of and statement of consistency with state and local laws. The local HUD office, TDHCA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by TDHCA or assistance under the HCV program for an eligible PHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program; and
- If the case involves an investment on the part of a member, officer, or employee of TDHCA, description of the nature of the investment, including disclosure/divestiture plans.

Where TDHCA has requested a conflict of interest waiver, TDHCA may not execute the HAP contract until HUD has made a decision on the waiver request. In considering whether to request a conflict of interest waiver from HUD, the Department will consider the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

*Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]*

HUD regulations permit TDHCA, at TDHCA's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If TDHCA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

The Department will refuse to approve a request for tenancy if any of the following are true:

- The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);
- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The owner has engaged in any drug-related criminal activity or any violent criminal activity;
- The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;
- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of TDHCA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the

right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;

- The owner has a history or practice of renting units that fail to meet state or local housing codes; and
- The owner has not paid state or local real estate taxes, fines, or assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, TDHCA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others.

### *Legal Ownership of Unit*

The Department will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year).

### ***NON-DISCRIMINATION [HAP Contract – Form HUD-52641]***

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with TDHCA.

The owner must cooperate with TDHCA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with TDHCA. See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

## **PART II: HAP CONTRACTS**

### ***OVERVIEW***

The HAP contract represents a written agreement between TDHCA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as TDHCA's obligations. Under the HAP contract, TDHCA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space.

See chapter 15 for a discussion of any special housing types included in TDHCA's HCV program.

If TDHCA has given approval for the family of the assisted tenancy, the owner and TDHCA execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

### ***HAP CONTRACT CONTENTS***

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract.

The HAP contract contains three parts.

Part A of the contract includes basic **contract information** about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of PHA and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract that prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. PHA policy on the amount of security deposit an owner may collect is found in Chapter 9.

In addition, PHAs have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by TDHCA is deemed received by the owner (e.g., upon mailing by TDHCA or actual receipt by the owner). The Department has not adopted a policy that defines when the housing assistance payment by the Department is deemed received by the owner. Therefore, no modifications to the HAP contract will be necessary.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit;
- Maintenance, Utilities, and Other Services;
- Term of HAP Contract;
- Provision and Payment of Utilities and Appliances;
- Rent to Owner: Reasonable Rent;
- PHA Payment to Owner;
- Prohibition of Discrimination;
- Owner's Breach of HAP Contract;
- PHA and HUD Access to Premises and Owner's Records;
- Exclusion of Third Party Rights;
- Conflict of Interest;
- Assignment of the HAP Contract;
- Written Notices; and
- Entire Agreement Interpretation;

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by TDHCA. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

## **HAP CONTRACT PAYMENTS**

### *General*

During the term of the HAP contract, and subject to the provisions of the HAP contract, TDHCA will make monthly HAP payments to the owner on behalf of the family, at the beginning of each month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. TDHCA will notify the owner and the family in writing of any changes in the HAP payment. HAP payments can be made only during the lease term, and only while the family is residing in the unit.

Part of TDHCAs efforts to streamline business processes are to recommend owners to be paid via direct deposit. In the event the owner declines, a written request must be submitted and recorded in the owners file.

Checks that are not received will not be replaced until 10 business days have passed from the date of the mailing, and a written request has been received from the payee to stop payment and re-issue.

The monthly HAP payment by TDHCA is credited toward the monthly rent to the owner under the family's lease. The total of the rent paid by the tenant, plus TDHCA HAP payment, should be equal to the rent specified in the lease (the rent to owner).

The family is not responsible for payment of the HAP payment, and TDHCA is not responsible for payment of the family's share of rent.

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b) (4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from TDHCA, the excess amount must be returned immediately. If TDHCA determines that the owner is not entitled to all or a portion of the HAP, TDHCA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP.

#### *Owner Certification of Compliance*

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from TDHCA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

#### *Late HAP Payments [24 CFR 982.451(a)(5)]*

TDHCA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if TDHCA fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

TDHCA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond TDHCA's control. In addition, late payment penalties are not required if TDHCA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

#### *Termination of HAP Payments*

TDHCA will continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, TDHCA will continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

The owner must inform the Department when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the Department when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the Department with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the Department will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier (unless the unit fails to meet HQS or the Owner violates some other part of the HCV program). The owner must inform the Department of the date when the family actually moves from the unit or the family is physically evicted from the unit.

#### ***BREACH OF HAP CONTRACT [24 CFR 982.453]***

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS;
- If the owner has violated any obligation under any other HAP contract under Section 8;
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan;
- If the owner has engaged in drug-related criminal activity;
- If the owner has committed any violent criminal activity; and

If TDHCA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

TDHCA rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing

assistance payment, termination of the payment or termination the HAP contract. TDHCA may also obtain additional relief by judicial order or action.

TDHCA will notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. TDHCA will provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

Before the Department invokes a remedy against an owner, the Department will evaluate all information and documents available to determine if the contract has been breached. If relevant, the Department will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, the Department will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

### ***HAP CONTRACT TERM AND TERMINATIONS***

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- TDHCA terminates the HAP contract;
- TDHCA terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- 180 calendar days have elapsed since TDHCA made the last HAP to the owner;
- The family is absent from the unit for longer than the maximum period permitted by TDHCA;
- The Annual Contributions Contract (ACC) between TDHCA and HUD expires; and
- TDHCA elects to terminate the HAP contract.

The Department may elect to terminate the HAP contract in each of the following situations:

- Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];
- The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;
- The unit does not meet HQS [24 CFR 982.404] – see chapter 8;
- The family breaks up [HUD Form 52641] – see chapter 3; and
- The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If TDHCA terminates the HAP contract, TDHCA will give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the Department gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to the Department any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

### ***CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]***

The HAP contract cannot be assigned to a new owner without the prior written consent of TDHCA.

An owner under a HAP contract must notify TDHCA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by TDHCA.

The assignment will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that TDHCA finds acceptable. The new owner must provide TDHCA with a copy of the executed agreement and recorded deed.

The Department will receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

The new owner must provide a written certification to the Department that includes:

- Recorded deed, copy of the escrow statement/ or document showing the transfer of title;
- Copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
- The effective date of the HAP contract assignment;
- Management Agreement to comply with the terms of the HAP contract
- Confirmation that the new owner is not a prohibited relative.

Within 10 business days of receiving the owner's request, the Department will inform the current owner in writing whether the assignment may take place. If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the Department will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the Department will process the leasing in accordance with the policies in chapter 9.

## Chapter 14: PROGRAM INTEGRITY

### **INTRODUCTION**

TDHCA is committed to ensuring that subsidy funds made available to TDHCA are spent in accordance with HUD requirements.

This chapter covers HUD and PHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents PHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures TDHCA will and may take when errors or program abuses are found.

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

### **PREVENTING ERRORS AND PROGRAM ABUSE**

The Department anticipates that the vast majority of families, owners, and Department employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the Department's HCV program is administered effectively and according to the highest ethical and legal standards, the Department will employ a variety of techniques to ensure that both errors and intentional program abuse are rare including:

- The Department will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.
- The Department will provide each applicant and participant with the publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.
- The Department will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key Department forms and form letters that request information from a family or owner.
- Department staff will be required to review and explain the contents of all HUD- and Department-required forms prior to requesting family member signatures.
- The Department will provide all first-time owners (or their agents) with Landlord Informational packets.
- The Department will provide each Department employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter, the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

## **DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, TDHCA will use a variety of activities to detect errors and program abuse.

### *Quality Control and Analysis of Data*

Under the Section 8 Management Assessment Program (SEMAP), HUD requires TDHCA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

In addition to the SEMAP quality control requirements, the Department will employ a variety of methods to detect errors and program abuse.

- The Department routinely will use available sources of enterprise income verification to compare with family-provided information.
- At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.
- The Department will compare family-reported income and expenditures to detect possible unreported income.

### *Independent Audits and HUD Monitoring*

OMB Circular A-133 requires all PHAs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies TDHCA of errors and potential cases of program abuse. The Department will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the Department's error detection and abuse prevention efforts.

### *Individual Reporting of Possible Errors and Program Abuse*

The Department will encourage staff, program participants, and the public to report possible program abuse.

## **INVESTIGATING ERRORS AND PROGRAM ABUSE**

### *When TDHCA Will Investigate*

The Department will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the Department to investigate, the allegation must contain at least one independently verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The Department will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

### *Consent to Release of Information [24 CFR 982.516]*

TDHCA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, TDHCA will require HCV families to give consent to the release of additional information.

### *Analysis and Findings*

The Department will base its evaluation on a preponderance of the evidence collected during its investigation. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

For each investigation, the Department will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed to the Department, and (3) what corrective measures or penalties will be assessed.

### *Consideration of Remedies*

All errors and instances of program abuse must be corrected prospectively. Whether TDHCA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

In the case of family-caused errors or program abuse, the Department will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the Department will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

### *Notice and Appeals*

The Department will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include: (1) a description of the error or program abuse, (2) the basis on which the Department determined the error or program abuses, (3) the remedies to be employed, and (4) the families right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).

## **PART II: CORRECTIVE MEASURES AND PENALTIES**

### ***SUBSIDY UNDER- OR OVERPAYMENTS***

A subsidy under- or overpayment includes: (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

#### *Corrections*

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, TDHCA will promptly correct the HAP, family share, and any utility reimbursement prospectively.

Increases in the family share will be implemented only after the family has received a 30 day notice. Any decreases in family share will become effective the first of the month following the discovery of the error.

#### *Reimbursement*

Whether the family or owner is required to reimburse TDHCA or TDHCA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect

subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

### ***FAMILY-CAUSED ERRORS AND PROGRAM ABUSE***

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows TDHCA to use incorrect information provided by a third party.

#### *Family Reimbursement to PHA [HCV GB pp. 22-12 to 22-13]*

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The Department may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, the Department will terminate the family's assistance in accordance with the policies in Chapter 12.

#### *PHA Reimbursement to Family [HCV GB p. 22-12]*

The Department will not reimburse the family for any underpayment of assistance when the family clearly causes the underpayment.

#### *Prohibited Actions*

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to TDHCA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

Any of the following will be considered evidence of family program abuse:

- Payment to the owner in excess of amounts authorized by the Department for rent, security deposit, and additional services;
- Offering bribes or illegal gratuities to the Department Board of Commissioners, employees, contractors, or other Department representatives;
- Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to the Department on the family's behalf;
- Use of a false name or the use of falsified, forged, or altered documents;
- Intentional misreporting of family information or circumstances (e.g. income, family composition);
- Omitted facts that were obviously known by a family member (e.g., not reporting employment income); and
- Admission of program abuse by an adult family member.

The Department may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

### *Penalties for Program Abuse*

In the case of program abuse caused by a family TDHCA may, at its discretion, impose any of the following remedies.

- TDHCA may require the family to repay excess subsidy amounts paid by TDHCA, as described earlier in this section.
- TDHCA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- TDHCA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- TDHCA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

### **OWNER-CAUSED ERROR OR PROGRAM ABUSE**

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

#### *Owner Reimbursement to TDHCA*

In all cases of overpayment of subsidy caused by the owner, the owner must repay to TDHCA any excess subsidy received. TDHCA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, TDHCA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

In cases where the owner has received excess subsidy, the Department will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

#### *Prohibited Owner Actions*

An owner participating in the HCV program must not:

- Make any false statement to TDHCA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by the Department;
- Charging a security deposit other than that specified in the family's lease;
- Charging the family for services that are provided to unassisted tenants at no extra charge;
- Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit;
- Knowingly accepting incorrect or excess housing assistance payments;

- Offering bribes or illegal gratuities to the Department Board of Commissioners, employees, contractors, or other Department representatives;
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the Department; and
- Residing in the unit with an assisted family.

#### *Remedies and Penalties*

When TDHCA determines that the owner has committed program abuse, TDHCA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any PHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

#### **PHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a PHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in TDHCA personnel policy.

PHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

#### *Repayment to TDHCA*

Neither a family nor an owner is required to repay an overpayment of subsidy if PHA staff [HCV GB. 22-12] cause the error or program abuse.

#### *PHA Reimbursement to Family or Owner*

TDHCA will reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from TDHCA's administrative fee reserves [HCV GB p. 22-12].

#### *Prohibited Activities*

Any of the following will be considered evidence of program abuse by Department staff:

- Failing to comply with any HCV program requirements for personal gain;
- Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner;
- Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to the Department;
- Disclosing confidential or proprietary information to outside parties;

- Gaining profit as a result of insider knowledge of Department activities, policies, or practices;
- Misappropriating or misusing HCV funds;
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program; and
- Committing any other corrupt or criminal act in connection with any federal housing program.

### ***CRIMINAL PROSECUTION***

When the Department determines that program abuse by an owner, family, or Department staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the Department will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

### ***FRAUD AND PROGRAM ABUSE RECOVERIES***

TDHCA may retain a portion of program fraud losses that TDHCA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

TDHCA will be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits TDHCA to retain the greater of:

- 50% of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that TDHCA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of TDHCA related to the collection, these costs must be deducted from the amount retained by TDHCA.

# Chapter 15: SPECIAL HOUSING TYPES

[24 CFR 982 Subpart M]

## INTRODUCTION

TDHCA may permit a family to use any of the special housing types discussed in this chapter. However, TDHCA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that PHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. TDHCA also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

The Department only operates a Section 8 Housing Choice Voucher Program. Families will not be permitted to use any special housing types, unless use is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

## PART I: SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605]

### **OVERVIEW**

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

### **PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for SRO housing is 75% of the 0-bedroom payment standard amount on TDHCA's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75% of the zero bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

### ***HOUSING QUALITY STANDARDS (HQS)***

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access:* Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities:* At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one-half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable. *Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.*

## **PART II: CONGREGATE HOUSING**

[24 CFR 982.606 through 982.609]

### ***OVERVIEW***

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by TDHCA, a family member or live-in aide may reside with the elderly person or person with disabilities. TDHCA will approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

#### ***PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION***

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), TDHCA will use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), TDHCA will use the 1-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

#### ***HOUSING QUALITY STANDARDS***

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have: (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

### **PART III: GROUP HOME**

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

#### ***OVERVIEW***

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by TDHCA, a live-in aide may live in the group home with a person with disabilities. TDHCA will approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

### ***PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION***

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be 0- or 1-bedroom, depending on TDHCA's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorate share of the payment standard for the group home size. The prorate share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorate share of the utility allowance for the group home.

The rents paid for participants residing in-group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorate portion of the reasonable rent for the group home. In determining reasonable rent, TDHCA should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

### ***HOUSING QUALITY STANDARDS***

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- *Sanitary Facilities:* A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service:* Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security:* Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material:* To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.

- *Site and Neighborhood:* Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash
  - Vermin or rodent infestation, and
  - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

## **PART IV: SHARED HOUSING**

[24 CFR 982.615 through 982.618]

### ***OVERVIEW***

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by TDHCA, a live-in aide may reside with the family to care for a person with disabilities. TDHCA will approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

### ***PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION***

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorated share of the payment standard for the shared housing unit size.

The prorate share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the prorate share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, TDHCA should consider whether sanitary and food preparation areas are private or shared.

### **HOUSING QUALITY STANDARDS**

TDHCA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family:* Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security:* The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

## **PART V. COOPERATIVE HOUSING**

[24 CFR 982.619]

### **OVERVIEW**

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged, “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

### **PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge

includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

### **HOUSING QUALITY STANDARDS**

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

## **PART VI: MANUFACTURED HOMES**

[24 CFR 982.620 through 982.624]

### **OVERVIEW**

A manufactured home is a manufactured structure, transportable in one or more parts that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and TDHCA will permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. PHAs may, but are not required to, provide assistance for such families.

### **SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE**

#### *Family Income*

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

#### *Lease and HAP Contract*

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

### **PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

#### *Payment Standards*

The FMR for a manufactured home space is generally 40% of the published FMR for a 2-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. TDHCA may establish a payment standard for manufactured home spaces that is between 90-110% of the FMR for manufactured home spaces for the HCV program.

#### *Utility Allowance*

TDHCA will establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family

actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

#### *Space Rent*

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

#### *Housing Assistance Payment*

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

#### *Rent Reasonableness*

Initially, and annually thereafter TDHCA will determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. TDHCA will consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the Manufactured Home Park or elsewhere.

### ***HOUSING QUALITY STANDARDS***

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

#### *Manufactured Home Tie-Down*

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

## CHAPTER 16: PROGRAM ADMINISTRATION

### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes TDHCA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to TDHCA. This part describes policies for recovery of monies that TDHCA has overpaid on behalf of families, or to owners, and describes the circumstances under which TDHCA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect a PHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies TDHCA will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes TDHCA's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes TDHCA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

## **PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]**

TDHCA will maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover PHA administrative expenses, TDHCA may use these funds for other housing purposes permitted by Federal, State and local law.

If TDHCA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct TDHCA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

HUD requires TDHCA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. The maximum amount that may be charged against the administrative fee reserve is \$25,000 or as may be adjusted by TDHCA official.

## **PART II: SETTING PROGRAM STANDARDS AND SCHEDULES**

### ***OVERVIEW***

Although HUD establishes many of the program's requirements centrally, the HCV program's regulations recognize that some flexibility is required to allow TDHCA to adapt the program to local conditions. This part discusses how TDHCA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- *Utility Allowances*, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

Copies of the payment standard and utility allowance schedules are available for review in the Department's offices during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

The Department will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

### ***PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]***

The payment standard sets the maximum subsidy payment a family can receive from TDHCA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions, FMRs are set at the 40th percentile of rents in the market area.

TDHCA will establish a payment standard schedule that establishes payment standard amounts for each FMR area within TDHCA's jurisdiction, and for each unit size within each of the FMR areas. For each unit

size, TDHCA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area.

Unless HUD grants an exception, TDHCA is required to establish a payment standard within a “basic range” established by HUD – between 90% and 110% of the published FMR for each unit size for the HCV program.

#### *Updating Payment Standards*

When HUD updates its FMRs, TDHCA will update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require TDHCA to make further adjustments if it determines that rent burdens for assisted families in TDHCA’s jurisdiction are unacceptably high 24 CFR 982.503(g)].

The Department will review the payment standards on an annual basis when the new FMR is published by HUD. In addition to ensuring the payment standards are always within the “basic range”, the Department will consider the following factors when determining whether and when an adjustment should be made to the payment standard schedule:

- **Funding Availability:** The Department will review the budget to determine the impact that projected subsidy adjustments will have on funding available for the program and the number of families served. The Department will compare the number of families that could be served under revised payment standard amounts with the number assisted under current payment standard amounts.
- **Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30% of their monthly-adjusted income as the family share. When 40% or more of families, for any given unit size, are paying more than 30% of adjusted monthly income as the family share, the Department will consider increasing the payment standard. In evaluating rent burdens, the Department will not include families renting a larger unit than required for their family unit size.
- **Quality of Units Selected:** The Department may review the quality of units selected by participant families when making the determination of the percent of income that families are paying for housing to ensure that payment standard increases are only made when needed to reach the mid-range of the market.
- **Changes in Rent to Owner:** The Department may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.
- **Unit Availability:** The Department may review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.
- **Lease-up Time and Success Rate:** The Department may consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Changes to payment standard amounts will be effective on January 1<sup>st</sup> of every year unless, based on the proposed FMRs, it appears that one or more of TDHCA’s current payment standard amounts will be outside the basic range when the final FMRs are published.

If TDHCA has already processed reexaminations that will be effective on or after January 1<sup>st</sup>, and the effective date of the payment standards is January 1<sup>st</sup>, TDHCA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by TDHCA at the time the reexamination was originally processed.

### *Exception Payment Standards [982.503(c)]*

TDHCA will request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50% of the population of the FMR area.

### *Unit-by-Unit Exceptions [24 CFR 982.503(c) (2) (ii)]*

Unit-by-unit exceptions to TDHCA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect TDHCA's payment standard schedule.

When needed as a reasonable accommodation, TDHCA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120% of the applicable FMR for the unit size [HCV GB 7-9]. TDHCA may request HUD approval for an exception to the payment standard for a particular family if the required amount falls above 120% of the FMR for the HCV program.

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, TDHCA will determine that:

- There is a shortage of affordable units that would be appropriate for the family;
- The family's Total Tenant Payment (TTP) would otherwise exceed 40% of adjusted monthly income; and
- The rent for the unit is reasonable.

### *"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]*

If a substantial percentage of families have difficulty finding a suitable unit, TDHCA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows TDHCA to set its payment standards at 90-110% of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR) for the HCV program. To support the request, TDHCA will demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75% of families who were issued vouchers became participants;
- TDHCA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110% of the published FMR for the HCV program; and
- TDHCA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, TDHCA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of TDHCA's jurisdiction within the FMR area.

*Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(d)]*

TDHCA will request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40% of program participants exceeds 30% of adjusted monthly income.

***UTILITY ALLOWANCES [24 CFR 982.517]***

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. TDHCA will maintain an updated utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, TDHCA will use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, TDHCA will classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service are stated separately by unit size and type. Chapter 16 of the *HCV Guidebook* provides detailed guidance to TDHCA about establishing utility allowance schedules.

The Department may outsource the preparation of utility allowances to a qualified provider. In addition, TDHCA will use the lesser of the size of dwelling unit actually leased by the family or the voucher size issued, as determined under the TDHCA subsidy standards (unless the size of the dwelling unit is larger because of a reasonable accommodation, in which case TDHCA will use the utility allowance for the larger unit size.)

*Air Conditioning*

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

The Department has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before the Department will apply this allowance to a family's rent and subsidy calculations.

*Reasonable Accommodation*

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on TDHCA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation for a larger unit size, it will use the utility allow for the size of the dwelling unit actually used by the family.

### *Utility Allowance Revisions*

TDHCA will review its schedule of utility allowances at least every 12 months, and must revise the schedule if there has been a change of 10% or more in any utility rate since the last time the allowance for that utility was revised.

TDHCA will maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

## **PART III: INFORMAL REVIEWS AND HEARINGS**

### **OVERVIEW**

When TDHCA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

PHAs are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

### **INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

#### *Decisions Subject to Informal Review*

TDHCA will give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on TDHCA waiting list;
- Denying or withdrawing a voucher;
- Refusing to enter into a HAP contract or approve a lease; and
- Refusing to process or provide assistance under portability procedures.

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by TDHCA;
- General policy issues or class grievances;
- A determination of the family unit size under TDHCA subsidy standards;
- A PHA determination not to grant approval of the tenancy;
- A PHA determination that the unit is not in compliance with the HQS; and
- A PHA determination that the unit is not in accordance with the HQS due to family size or composition.

The Department will only offer an informal review to applicants for whom assistance has been denied. Denial of assistance includes Department’s refusal to include applicant on waiting list; denying or

withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; or refusing to process or provide assistance under portability procedures.

*Notice to the Applicant [24 CFR 982.554(a)]*

TDHCA will give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for TDHCA decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

*Scheduling an Informal Review*

A request for an informal review must be made in writing and delivered to the Department, either in person or by mail, by the close of the business day, no later than 10 business days from the date of the Department's denial of assistance.

The Department will schedule and send written notice of the informal review within 10 business days of the family's request.

*Informal Review Procedures [24 CFR 982.554(b)]*

A person other than the one who made or approved the decision under review, or a subordinate of this person must conduct the informal review.

The applicant must be provided an opportunity to present written or oral objections to the decision of TDHCA.

The person conducting the review will make a recommendation to TDHCA, but TDHCA is responsible for making the final decision as to whether assistance should be granted or denied.

*Informal Review Decision [24 CFR 982.554(b)]*

TDHCA will notify the applicant of TDHCA's final decision, including a brief statement of the reasons for the final decision. In rendering a decision, the Department will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice.
- The validity of grounds for denial of assistance. If the grounds for denial are not specified in federal law, the regulations or this plan, then the decision to deny assistance will be overturned.
- The validity of the evidence. The Department will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and HUD requires the denial, the Department will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, the Department will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The Department will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

***INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555, PUB.L. 109-162]***

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to

TDHCA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether TDHCA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

TDHCA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. TDHCA will provide a 30-day notice or more prior to termination unless the family has been confirmed as a skip or a deceased person. This shall provide adequate time for the participant to request a hearing and a hearing to be scheduled. Deceased clients with no eligible remaining family member shall have the contract terminated the last day of the month in which the death occurred. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease;
- Terminating housing assistance payments under an outstanding HAP contract; and
- Refusing to process or provide assistance under portability procedures.
- Skipping –defined as a family who moves from the assisted unit without prior appropriate notice to the owner and the approval of TDHCA. This must be a written approval or proof of certified mailing if the owner cannot be reach or refusing to sign and the lease is now a month-to-month lease. PHA must also receive this notice and approve by issuances of a voucher prior to the move.

#### *Decisions Subject to Informal Hearing*

Circumstances for which TDHCA will give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment;
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from TDHCA utility allowance schedule;
- A determination of the family unit size under TDHCA's subsidy standards;
- A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under TDHCA's subsidy standards, or TDHCA determination to deny the family's request for exception from the standards;
- A determination to terminate assistance for a participant family because of the family's actions or failure to act;
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules; and
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)].

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by TDHCA;
- General policy issues or class grievances;
- Establishment of TDHCA schedule of utility allowances for families in the program;
- A PHA determination not to approve an extension or suspension of a voucher term;

- A PHA determination not to approve a unit or tenancy;
- A PHA determination that a unit selected by the applicant is not in compliance with the HQS;
- A PHA determination that the unit is not in accordance with HQS because of family size; and
- A determination by TDHCA to exercise or not to exercise any right or remedy against an owner under a HAP contract.

The Department will offer participants the opportunity for an informal hearing when required to by the regulations.

### ***INFORMAL HEARING PROCEDURES***

#### *Notice to the Family [24 CFR 982.555(c)]*

When TDHCA makes a decision that is subject to informal hearing procedures, TDHCA will inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, TDHCA will notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to TDHCA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

In cases where the Department makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

- The Department's hearing procedures.
- The proposed action or decision of the Department.
- A brief statement of the reasons for the decision, including the regulatory reference.
- The date the proposed action will take place.
- A statement of the family's right to an explanation of the basis for the Department's decision.
- A statement that if the family does not agree with the decision, the family may request an informal hearing of the decision.
- A deadline for the family to request the informal hearing.
- Identification of the person to whom the hearing request should be addressed.

#### *Scheduling an Informal Hearing [24 CFR 982.555(d)]*

When an informal hearing is required, TDHCA will proceed with the hearing in a reasonably expeditious manner upon the request of the family.

The family must submit, in writing, a request for an informal hearing and deliver it to the Department either in person, by mail, or by courier at the close of the business day. The request for an informal hearing

must be submitted to the Department no later than 10 business days from the date of the Department's decision or notice to terminate assistance.

The Department will schedule and send written notice to the family for the informal hearing appointment within 10 business days of receipt of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict that seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made in writing prior to the hearing date. At its discretion, the Department may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the Department within 24 hours of the scheduled hearing date, excluding weekends and holidays to request that the Department consider rescheduling the hearing. The Department will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

#### *Pre-Hearing Right to Discovery [24 CFR 982.555(e)]*

Participants and TDHCA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If TDHCA does not make the document available for examination on request of the family, TDHCA may not rely on the document at the hearing.

TDHCA hearing procedures may provide that TDHCA will be given the opportunity to examine at TDHCA offices before the hearing, any family documents that are directly relevant to the hearing. TDHCA will be allowed to copy any such document at TDHCA's expense. If the family does not make the document available for examination on request of TDHCA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

One copy of documents requested will be provided to the family free of charge. Any fees for copying or procuring subsequent copies of the documents shall be at the expense of the family. at a cost of \$.25 per page. The family must request discovery of Department documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

The Department will be given an opportunity to examine at the Department offices, before the hearing, any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the Department will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

#### *Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]*

At its own expense, a lawyer or other representative at the informal hearing may represent the family.

#### *Informal Hearing Officer [24 CFR 982.555(e)(4)] and Attendance at the Informal Hearing*

Informal hearings will be conducted by hearing officer identified as the Deputy Executive Director with responsibility for the Community Affairs Programs or her designee.

The Department's structure for conducting an informal hearing consists of a hearing officer (as defined above) and at least two other persons, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision to terminate assistance.

A hearing officer and the following applicable persons may attend hearings:

- A Department representative, Department's counsel, and any witnesses for the Department;
- The participant and any witnesses for the participant;
- The participant's counsel or other representative; and
- Any other person approved by the Department as a reasonable accommodation for a person with a disability.

#### *Conduct at Hearings*

The person who conducts the hearing may regulate the conduct of the hearing in accordance with TDHCA's hearing procedures [24 CFR 982.555(4)(ii)]. The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

#### *Evidence [24 CFR §982.555(e)(5)]*

TDHCA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

- **Oral evidence:** the testimony of witnesses
- **Documentary evidence:** written documentation relevant to the case includes all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.
- **Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.
- **Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either the Department or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence. Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

#### *Hearing Officer's Decision [24 CFR §982.555(e)(6)]*

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on

a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family.

In rendering a decision, the hearing officer will consider the following matters:

- **Department Notice to the Family:** The hearing officer will determine if the reasons for the Department's decision are factually stated in the Notice.
- **Discovery:** The hearing officer will determine if the Department and the family were given the opportunity to examine any relevant documents in accordance with Department policy.
- **Department Evidence to Support the Department Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the Department's conclusion.
- **Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and Department policies. If the grounds for termination are not specified in the regulations or in compliance with Department policies, then the decision of the Department will be overturned.

The hearing officer will issue a written decision to the family and the Department no later than 10 business days after the hearing. The report will contain the following information:

- **Hearing information:**
  - Name of the participant;
  - Date, time and place of the hearing;
  - Name of the hearing officer;
  - Name of hearing committee representatives; and
  - Name of family representative (if any).
- **Background:** A brief, impartial statement of the reason for the hearing.
- **Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.
- **Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
- **Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the Department's decision.
- **Order:** The hearing report will include a statement of whether the Department's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the Department to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the Department to restore the participant's program status.

### *Procedures for Rehearing or Further Hearing*

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the Department will take effect and another hearing will not be granted.

In addition, within 10 business days after the date of the hearing officer's report is presented to the Department and mailed to the participant, the Department or the participant may request a rehearing or a further hearing. Such request must be made in writing and postmarked or hand-delivered to the hearing officer and to the other party within the 10 business day period. The request must demonstrate cause, supported by specific references to the hearing officer's report, why the request should be granted.

A rehearing or a further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known at the time of the hearing.

It shall be within the sole discretion of the Department to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer.

### *PHA Notice of Final Decision [24 CFR 982.555(f)]*

The Department is not bound by the decision of the hearing officer for matters in which the Department is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws.

If the Department determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the Department will promptly notify the family of the determination and the reason for the determination.

The Department will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by mail, postage pre-paid with an affidavit of mailing enclosed.

The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof of mailing will be maintained in the Department's file.

### ***HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR §5.514]***

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while TDHCA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or TDHCA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### *Notice of Denial or Termination of Assistance [24 CFR §5.514(d)]*

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for non-citizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for pro-ration of assistance.
  - In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR §§5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with TDHCA upon completion of the USCIS either appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

#### *USCIS Appeal Process [24 CFR §5.514(e)]*

When TDHCA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, TDHCA will notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide TDHCA with a copy of the written request for appeal and the proof of mailing.

The Department will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results. The family must provide the Department with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to TDHCA, of its decision. When the USCIS notifies TDHCA of the decision, TDHCA will notify the family of its right to request an informal hearing.

The Department will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

#### *Informal Hearing Procedures for Applicants [24 CFR §5.514(f)]*

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that TDHCA provide a hearing. The request for a hearing must be made either within 30 days of receipt of TDHCA notice of denial or termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

The informal hearing procedures for applicant families are described below.

#### *Informal Hearing Officer*

TDHCA will provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

#### *Evidence*

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of TDHCA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

One copy of documents requested will be provided to the family free of charge. Any fees for copying or procuring additional copies of documents shall be at the expense of the family. at a cost of \$.25 per page copy. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by TDHCA, and to

#### *Representation and Interpretive Services*

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf. The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or TDHCA, as may be agreed upon by the two parties.

#### *Recording of the Hearing*

The family is entitled to have the hearing recorded by audiotape. TDHCA may, but is not required to provide a transcript of the hearing.

The Department will not provide a transcript of an audio-taped hearing unless requested and only if available.

#### *Hearing Decision*

TDHCA will provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

#### *Retention of Documents [24 CFR §5.514(h)]*

TDHCA will retain for a minimum of 5 years the following documents that may have been submitted to TDHCA by the family, or provided to TDHCA as part of the USCIS appeal or TDHCA informal hearing process:

- The application for assistance;
- The form completed by the family for income reexamination;
- Photocopies of any original documents, including original USCIS documents;
- The signed verification consent form;
- The USCIS verification results;
- The request for an USCIS appeal;
- The final USCIS determination;
- The request for an informal hearing;
- The final informal hearing decision;

## **PART IV: OWNER OR FAMILY DEBTS TO TDHCA**

### ***OVERVIEW***

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to TDHCA [24 CFR 982.54]. This part describes TDHCA's policies for recovery of monies that have been overpaid on behalf of families, or to owners.

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the Department holds the owner or participant liable to return any overpayments to the Department.

The Department will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

### ***REPAYMENT POLICY***

#### *Owner Debts to TDHCA*

The owner must repay any amount due to the Department within 30 business days of the Department determination of the debt.

If the owner fails to repay the debt within the required time-frame and is entitled to future HAP payments, the Department will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments, refuses to repay the debt within the required time-frame, or breaches a repayment agreement, the Department will ban the owner from future participation in the program, may pursue other modes of collection, and/or report to the Inspector General.

#### *Family Debts to TDHCA*

The family must repay any amount due to the Department. If the family is unable to repay the debt within 30 business days, the Department will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, the Department will terminate the assistance upon notification to the family and may pursue other modes of collection.

### *Repayment Agreement [24 CFR §792.103]*

The term *repayment agreement* refers to a formal document signed by a tenant or owner and provided to TDHCA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time-periods. TDHCA will not enter into more than one repayment agreement. If the family has not fulfilled their existing repayment agreement, the family will be terminated from the program and the debt will be recorded in EIV.

### **REPAYMENT AGREEMENT GUIDELINES**

#### *Down Payment Requirement*

Prior to the execution of a repayment agreement, the owner or family must pay 20% of the balance owed to the Department.

#### *Payment Thresholds*

TDHCA will enter into repayment agreements for amounts not to exceed \$4,000. TDHCA will not enter into a repayment agreement for amounts greater than \$4,000 and will terminate the family from the program and recorded in EIV.

#### *Execution of the Agreement*

The head of household and spouse/co-head (if applicable) must sign the repayment agreement.

#### *Due Dates*

All payments are due by the close of business on the 5<sup>th</sup> day of the month. If the 5<sup>th</sup> is not on a business day, the due date is the close of business on the first business day after the 5<sup>th</sup>.

#### *Non-Payment*

If a payment is not received by the end of the business day on the date due, and the Department has not given prior approval for the missed payment, the Department will consider the repayment agreement in default and TDHCA will terminate assistance upon written notification. Exceptions may be made to the deadline in extenuating circumstances.

#### *No Offer of Repayment Agreement*

The Department will not enter into a repayment agreement if there is already a repayment agreement in place with the family or owner, or the amounts owed by the family or owner is more than the \$4,000 and the amounts exceeds the Federal or Stated threshold for criminal prosecution.

## **PART V: MANAGEMENT ASSESSMENT (SEMAP)**

### **OVERVIEW**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect TDHCA in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR §985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR §985.106].
- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated “troubled” may not use any part of the administrative fee reserve for other housing purposes [24 CFR §985.107].
- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR §985.109].

### ***SEMAP CERTIFICATION [24 CFR §985.101]***

PHAs must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by PHA board resolution and signed by TDHCA executive director. If TDHCA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

PHAs with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHAs annually if TDHCA elects to have its performance assessed on an annual basis; or is designated as “troubled” [24 CFR §985.105].

Failure of a PHA to submit its SEMAP certification within the required time-frame will result in an overall performance rating of “troubled.”

A PHA’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of TDHCA’s SEMAP certification, HUD will rate TDHCA’s performance under each SEMAP indicator in accordance with program requirements.

### ***HUD Verification Method***

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. TDHCA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify TDHCA's certification on the indicator due to TDHCA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR §985.3].

### ***SEMAP INDICATORS [24 CFR §985.3 and form HUD-52648]***

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

## **EXHIBIT 16-1: SEMAP INDICATORS**

### **Indicator 1: Selection from the waiting list**

#### **Maximum Score: 15**

- This indicator shows whether TDHCA has written policies in its administrative plan for selecting applicants from the waiting list and whether TDHCA follows these policies when selecting applicants for admission from the waiting list.
- Points are based on the percent of families that are selected from the waiting list in accordance with TDHCA's written policies, according to TDHCA's quality control sample.

### **Indicator 2: Rent reasonableness**

#### **Maximum Score: 20**

- This indicator shows whether TDHCA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units
- Points are based on the percent of units for which TDHCA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to TDHCA's quality control sample.

### **Indicator 3: Determination of adjusted income**

#### **Maximum Score: 20**

- This indicator measures whether TDHCA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.
- Points are based on the percent of files that are calculated and verified correctly, according to TDHCA's quality control sample.

### **Indicator 4: Utility allowance schedule**

#### **Maximum Score: 5**

- This indicator shows whether TDHCA maintains an up-to-date utility allowance schedule.
- Points are based on whether TDHCA has reviewed the utility allowance schedule and adjusted it when required, according to TDHCA's certification.

### **Indicator 5: HQS quality control inspections**

#### **Maximum Score: 5**

- This indicator shows whether a PHA supervisor re-inspects a sample of units under contract during TDHCA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control re-inspections were completed, according to TDHCA's certification.

### **Indicator 6: HQS enforcement**

#### **Maximum Score: 10**

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, either any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30

calendar days from the inspection or any PHA-approved extension, or TDHCA took appropriate action.

- Points are based on whether TDHCA took appropriate action when the responsible party failed to correct all HQS deficiencies in accordance with required time-frames, according to TDHCA's certification.

**Indicator 7: Expanding housing opportunities**

**Maximum Points: 5**

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether TDHCA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside TDHCA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.
- Points are based on whether TDHCA has adopted and implemented written policies in accordance with SEMAP requirements, according to TDHCA's certification.

**Indicator 8: Payment standards**

**Maximum Points: 5 points**

- This indicator shows whether TDHCA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in TDHCA's jurisdiction, that are within the basic range of 90 to 110% of the published FMR.
- Points are based on whether TDHCA has appropriately adopted a payment standard schedule(s), according to TDHCA's certification.

**Indicator 9: Annual reexaminations**

**Maximum Points: 10**

- This indicator shows whether TDHCA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are not overdue, according to data from PIC.

**Indicator 10: Correct tenant rent calculations**

**Maximum Points: 5**

- This indicator shows whether TDHCA correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

**Indicator 11: Pre-contract HQS inspections**

**Maximum Points: 5**

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

**Indicator 12: Annual HQS inspections**

**Maximum Points: 10**

- This indicator shows whether TDHCA inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are not overdue, according to data from PIC.

**Indicator 13: Lease-up****Maximum Points: 20 points**

- This indicator shows whether TDHCA enters into HAP contracts for the number of units or funding reserved under ACC for at least one year.

Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by TDHCA, according to data from TDHCA's last year-end operating statement that is recorded in HUD's accounting system.

**Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances****Maximum Points: 10**

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether TDHCA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income that resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

**Success Rate of Voucher Holders****Maximum Points: 5**

- Only applies to PHAs that have received approval to establish success rate payment standard amounts, and is not effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.
- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program

**Deconcentration Bonus Indicator****Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100% of the published FMR set at the 50-percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50th percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points

## **PART VI: RECORDKEEPING**

### ***OVERVIEW***

TDHCA will maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, TDHCA will ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### ***RECORD RETENTION [24 CFR §982.158]***

During the term of each assisted lease, and for at least three years thereafter, TDHCA will keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, TDHCA will keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR Part 35, Subpart B.;
- Accounts and other records supporting PHA budget and financial statements for the program;
- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

TDHCA will also keep the last three years of the form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date.

### ***RECORDS MANAGEMENT***

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

All applicant and participant information will be scanned and placed in a designated area located in a secure location and access will be limited to authorized Department staff. Department staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action. Electronic data is kept in compliance with 24 CFR Part 908.

### *Privacy Act Requirements [24 CFR 5.212 and Form-9886]*

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or TDHCA may release the information collected.

### *Enterprise Income Verification (EIV) Records*

PHAs that access EIV data through HUD's EIV System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in *Enterprise Income Verification (UIV) System PHA Security Procedures, Version 1.1*, issued April 4, 2004. The Department has implemented EIV security procedures required by HUD.

### *Criminal Records*

TDHCA may only disclose the criminal conviction records which TDHCA receives from a law enforcement agency to officers or employees of TDHCA, or to authorized representatives of TDHCA who have a job-related need to have access to the information [24 CFR 5.903(e)].

TDHCA will establish and implement a system of records management that ensures that any criminal record received by TDHCA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to TDHCA action without institution of a challenge or final disposition of any such litigation [24 CFR §5.903(g)].

TDHCA will establish and implement a system of records management that ensures that any sex offender registration information received by TDHCA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to TDHCA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR §5.905.

### *Medical/Disability Records*

PHAs are not permitted to inquire about the nature or extent of a person's disability unless needed to qualify for a voucher that is based on having a qualifying disability or as needed to evaluate the need for a reasonable accommodation. TDHCA may not inquire details of treatment for a disability or medical condition. If TDHCA receives a verification document that provides such information, TDHCA should not place this information in the tenant file or mark thru with a black marker and photocopy. TDHCA should destroy the document.

## **PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

### **OVERVIEW**

TDHCA has certain responsibilities relative to children with elevated blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that TDHCA is subject to reliable.

#### ***REPORTING REQUIREMENT [24 CFR §35.1225]***

Within 15 calendar days of being notified of a child under the age 6 elevated blood level with elevated blood lead level by a public health department or notified by any other medical health care professional, TDHCA will notify the owner .

The Department will provide the local public health department with written notice of the name and address of any child identified as having an environmental intervention blood lead level within five calendar days after being notified by a non-medical health care professional. The Department will monitor and if necessary collaborate with the owner to notify HUD field office of any confirmed case within 5 calendar days.

#### ***DATA COLLECTION AND RECORD KEEPING [24 CFR §35.1225(f)]***

At least quarterly, TDHCA will attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If TDHCA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), TDHCA will match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, TDHCA will carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, TDHCA will also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

The Department will provide an updated list of the addresses of units receiving assistance under the HCV program to the Department of State and Health Services, Child Lead Poisoning Prevention Program on a quarterly basis.

#### ***Determination of Insufficient Funding***

The HCV regulations allows PHA to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR §§982.314(e)(1) and 982.454]. Insufficient funding may also impact TDHCA's ability to issue vouchers to families on the waiting list. This part discusses the methodology TDHCA will use to determine whether or not TDHCA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

#### ***Methodology***

TDHCA will determine where there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing TDHCAs budget authority

to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date.

## **CHAPTER 17: VETERAN ASSISTANCE SUPPORTIVE HOUSING PROGRAM (VASH)**

### **PROJECT-BASED VASH (PBV)**

Since Fiscal Year (FY) 2008, Housing Choice Voucher program funding has provided rental assistance under a supportive housing program for homeless veterans authorized by Title 42, Chapter 8, Subchapter I, § 1437f(o)(19) of the United States Housing Act of 1937. The initiative, known as the HUD-VASH program, was initially authorized by the Consolidated Appropriations Act, 2008. Each annual HUD appropriation since 2008 has continued to authorize this program.

In addition, HUD has periodically made set-aside funding available for project-based HUD VASH vouchers (PBV). Applications for HUD's PBV set-aside funding are released to the public as federal appropriations allow.

The PBV program will result in a de-concentration of poverty and an expansion of housing and economic opportunities. The standards comply with the policy goals, civil rights requirements, and housing quality standards found in 24 CFR § 983.57(b) and other provisions of the Code of Federal Regulations, as well as other guidance from the Department of Housing and Urban Development. The Department will not select a site until it "has determined that PBV assistance for housing at the selected site is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities."

The Department Project-Based VASH program is subject to all applicable requirements of the Department's most current Administrative Plan, including the requirements detailed below. Current HUD guidance provides two methods for PBV proposal selections: (1) issue a request for proposals, or (2) select a proposal based on a previous competition under a federal, state, or local government housing assistance, community development, or supportive services program [24 CFR 983.51].

If the Department utilizes method 1, The Department will provide broad public notice of the opportunity to offer PBV proposals for consideration. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the request for PBV proposals must specify the submission deadline. Detailed application and selection information will be provided at the request of interested parties [24 CFR §983.51].

If TDHCA utilizes method 2, TDHCA will select an eligible proposal for housing assisted under a federal, state, or local government housing assistance, community development, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance [24 CFR §983.51(b)].

The Department may 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.

The Department will pursue vouchers when possible and if available, will pursue either Option 1 or 2 for selection methods, depending on the circumstances.

### ***PBV SITE SELECTION***

The Department will select sites according to guidance contained within 24 CFR §983.57. Any PBV proposal will only be considered by The Department if the proposed site is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities. Any PBV proposal and associated project site must be consistent with 24 CFR Part 903 and this Administrative Plan. The Department will assess the viability of a PBV proposal/site selection according to:

- Owner experience and capability to build or rehabilitate housing as identified in the proposal;
- Extent to which the project furthers The Department's goal of de-concentrating poverty and expanding housing and economic opportunities;
- The extent to which services are provided on-site or in the immediate area for occupants of the property.

### ***25 PERCENT CAP ON NUMBER OF PBV UNITS PER BUILDING***

Exceptions to the 25% cap will be granted only if the units are excepted units in a multifamily building specifically made available for elderly or disabled families or families (qualifying families) receiving supportive services, per guidelines contained within 24 CFR §983.56.

The Department staff will conduct annual on-site monitoring visits to assess and measure compliance with supportive services requirements.

### ***PBV WAIT LIST***

Applicants who will occupy units with PBV assistance must be selected from either the Department VASH (voucher) list, or the PBV (project-based voucher) list. The Department will work closely with the VA to ensure applicants are placed on the appropriate wait list (or both wait lists).

Under these new alternative requirements established in the [09/27/2021](#) rule notice, HUD is Allowing PHAs to house HUD-VASH veterans referred by the VA in a project-based voucher unit without selecting from TDHCA's waiting lists or applying local preferences (section II.a).

### ***OWNER SELECTION (SCREENING) OF TENANTS***

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing conditions for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

### ***ANNUAL PLAN AMENDMENT CERTIFICATION***

This amendment is in compliance with 24 CFR §§903.7(r)(2)(ii) and 24 CFR 903.21. The inclusion of PBV in the Department's Annual Plan does not alter the overall mission of TDHCA, but may alter the applicant served.

### ***PROJECTED PBV UNITS***

The Department will limit PBV units to 75 per property location, in areas where significant need is demonstrated.

### ***METHODOLOGY***

TDHCA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing TDHCA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date.

To that figure, TDHCA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if TDHCA cannot support the cost of the proposed subsidy commitment, (voucher issuance or move) based on the funding analysis, TDHCA will be considered to have insufficient funding.

### ***PBV Waiting List***

#### *Maintenance and Selection of the Waiting List:*

A waiting list for occupancy of a unit assisted under the PBV Program will be maintained for projects receiving PBV assistance. An applicant may choose to be simultaneously listed on the PBV waiting list as well as the Department's voucher program waiting list if open, and eligible. Section 4 and 5 of this Administrative Plan also applies to managing the waiting list. The family will be required to update their information with the Department by providing information regarding household members including name, address, telephone numbers, social security numbers, picture identification for all adult members, birth certificates, racial or ethnic designation, income verification, citizenship/eligible immigration for all members, bank information if applicable. The family must sign the Authorization to Release Records and Information and HUD's Authorization for the Release of Information/Privacy Act Notice forms.

#### *Owner Selection of Tenants:*

The owner is responsible for implementing written tenant selection procedures in accordance to the properties policy that are consistent with the purpose of improving housing opportunities for very low-income VASH families eligible under the lease. During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by VAMC from the VASH waiting list.

### ***HAP Contract Between the Department and Property Owner***

In the absence of a current HAP Contract from HUD at the initial signing of a contract, an addendum will be created to address any updated regulations (ie. HOTMA regulations) not currently listed in the contract. The addendum will become a part of the Initial Contract.

#### ***Term of HAP Contract***

The Department may enter into a HAP contract with a PBV owner for an initial term of 15 years subject to funding availability pursuant to 24 CFR §983.205

#### ***Extension of HAP Contract***

Within one year before expiration, the Department may agree to extend the term of the HAP contract for an additional term subject to funding availability.

#### ***Termination of HAP Contract***

Termination by the Department may terminate the HAP contract due to insufficient funds pursuant to 24 CFR §983.205.

#### ***Termination by the Property Owner***

The owner may terminate the HAP contract due to reduction below initial rent pursuant to 24 CFR §983.205.

### ***Contract rents***

Initial Contract rents will be determined by following HUD regulations at 24 CFR §§983.301 and 24 CFR 983.302 when re-determining rents. The Department will utilize FMR at 100%. The Department will use the utility allowance schedule published by the property for the PBV program.

### ***Security Deposits***

The Department prohibits security deposits in excess of amounts charged to unassisted tenants. When the tenant moves out of the 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 law.

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. The Department has no liability or responsibility for payment of any amount owed by the family to the owner.

### ***Rent Increases***

The owner's request for a rent increase must be submitted to the Department 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

### ***Termination of Lease***

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 the Department. If the family wishes to move with continued assistance, the family must contact the VASH Coordinator and the Department to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, the Department is required to offer the family the opportunity for receive VASH tenant-based assistance, or other comparable tenant based rental assistance. If a voucher or other comparable tenant based assistance is not immediately available upon termination of the family's lease in the PBV unit, the Department will give the family priority to receive the next available opportunity for continued tenant based assistance.

Under these new alternative requirements established in the [09/27/2021](#) rule notice, If a HUD-VASH family is eligible to move from its PBV unit and there is no HUD-VASH tenant-based voucher available at the time the family requests to move, TDHCA may require a family that still requires case management to wait for a HUD-VASH tenant-based voucher for a period not to exceed 180 days.

If a HUD-VASH tenant-based voucher is still not available after that time-period, the family must be allowed to move with its HUD-VASH voucher. Alternatively, TDHCA may allow the family to move with its HUD-VASH voucher without having to meet this 180-day waiting period.

In either case, TDHCA may either replace the assistance in the PBV unit with one of its regular vouchers if the unit is eligible for a regular PBV (for instance, so long as the unit is not on the grounds of a medical facility and so long as the unit is eligible under TDHCA's program and project caps) or TDHCA and owner may agree to temporarily remove the unit from the HAP contract.

If a HUD-VASH veteran has been determined that case management is no longer required, TDHCA will allow the family to move with the first available tenant-based voucher if no HUD-VASH voucher is immediately available and cannot require the family to wait for a HUD-VASH voucher to become available.

## **TENANT-BASED VASH (TBV)**

The Department was awarded 20 HUD Veterans Affairs Supportive Housing (HUD-VASH) vouchers that will be administered in the Fort-Bend/ Galveston County area in partnership with the Veterans Assistance Medical Centers (VAMC) and local Community-Based Outpatient Clinics (CBOCs). The Medical VAMC expect to assist twenty homeless veterans and their families in the Fort-Bend/ Galveston County area providing case management.

The Department will administer the HUD-VASH vouchers in a manner that adheres to all applicable requirements of the HUD-VASH program, including applicable tenant-based voucher requirements at 24 CFR Part 982 and applicable HUD-VASH program requirements.

The HUD-VASH program requirements include waivers and alternative requirements authorized by the HUD-VASH program statute and detailed in the Revised Operating Requirements published in the Federal Register on March 23, 2012 (77 Fed. Reg. 17086-17090).

This and other documents pertinent to the program are on the HUD-VASH website at:

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/vash](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/vash). The provisions of this Administrative Plan are applicable to HUD-VASH vouchers except where inconsistent with requirements of the HUD-VASH program, in which case the latter requirements are applicable.

### ***Eligibility and Screening***

Eligible veterans for VASH vouchers will be referred by the VAMC with written documentation of the referral maintained in the file.

Screening will include income eligibility and sex offender screening only. EIV, prior debt and adverse termination screening do not apply to VASH families. Other VASH family members should be screened and denied if they have a lifetime sex offender registration requirement.

### ***Housing Search, Lease-up and Portability***

The initial voucher term for a VASH voucher will be 120 days. Initial leases may be less than one year if a shorter lease term would improve housing opportunities for the tenant. VASH voucher holders may use their voucher to live on the grounds of a VAMC in units owned by the VAMC if selected.

VASH participants may only reside in jurisdictional areas that are accessible to case management services as determined by the partnering VAMC. In all cases of portability, the initial VA facility must be consulted prior to the move and provide written confirmation that case management will continue to be provided in the family's new unit.

If the receiving PHA does not administer a HUD-VASH program, it must bill the initial PHA. If the receiving PHA does administer HUD-VASH vouchers, it may absorb the family if a HUD-VASH voucher is available and case management can be provided through a VA facility that partners with the receiving PHA. In the cases of portability, the initial VA facility must make the determination regarding which VA facility will provide the family with case management. This determination will ultimately affect whether the receiving PHA can absorb the family.

### ***Tenancy Issues***

If the veteran dies, the voucher remains with the remaining members of the tenant family, however TDHCA may issue a regular tenant based voucher and free up the VASH voucher.

### ***In the case of family splits***

i.e. divorce, the VASH voucher remains with the veteran. A VASH voucher family may be terminated for failure to participate is required case management; h. However, a VAMC determination that the participant family no longer requires case management is not grounds for termination of assistance. TDHCA has the option to offer this family one of its regular vouchers in order to free up the VASH voucher. VASH families are entitled to informal hearings and reviews.

### ***VAWA***

Each PBV property of the Department will establish an Emergency Transfer Plan under VAWA as further described on page 42 of this Administrative Plan.

## **REVISED IMPLEMENTATION OF THE HUD-VASH PROGRAM**

The new alternative requirements established in the rule by HUD in the [09/27/2021](#) notice apply to all PHAs that administer HUD-Veterans Assistance Supportive Housing (VASH) vouchers, including those that have not received an allocation of HUD-VASH vouchers, but administer these vouchers as a receiving PHA under the portability feature of the HCV program.

### ***New Waivers and Program Flexibilities***

New waivers and flexibilities include the following:

1. New authorization allowing a PHA to act in the role of the Veterans Assistance Medical Center (VAMC) or Designated Service Providers (DSPs) for the purposes of family selection in cases where TDHCA has been previously approved for this authority (section II.a.);
2. New allowance for a PHA and owner to agree to amend a PBV HAP contract to re-designate a regular PBV unit as a unit specifically designated for HUD-VASH families (section II.k);
3. New authorization for PHAs to apply separate payment standards for HUD-VASH families without additional HUD approval (section II.o.); and
4. New requirement that PHAs must allow Special Housing Types for HUD-VASH (section II.p.).

### ***Updates***

Additional updates made to existing requirements include:

1. Allowing PHAs to house HUD-VASH veterans referred by the VA in a project-based voucher unit without selecting from TDHCA's waiting lists or applying local preferences (section II.a);
2. Additional explanation regarding the process for portability moves for victims of domestic violence, dating violence, sexual assault, and stalking (section II.f);
3. Additional case management requirements from the VAMC or DSP (section II.g);
4. Provision that in the case of a family break-up, the HUD-VASH assistance must stay with the HUD-VASH veteran; however, in the case of domestic violence, dating violence, sexual assault, or

stalking in which the HUD-VASH veteran is the perpetrator, the victim must continue to be assisted (section II.h.);

5. Provision that a Moving to Work (MTW) PHA can apply their approved MTW provisions to their HUD-VASH program with approval from HUD's Housing Choice Voucher office (section II.j.);
6. Application of HUD-VASH waivers and flexibilities to HUD-VASH PBV (section II.k);
7. HUD-VASH PBV exceptions under the Housing Opportunities Through Modernization Act (HOTMA) (section II.k.);
8. Provision that when a HUD-VASH family is eligible to move from its PBV unit the family must be able to move with a HUD-VASH tenant-based voucher (section II.k.); and
9. Additional explanation of the HUD-VASH reallocation process through voluntary moves between PHAs and voucher recapture for future reallocation (section II.m.).

### *Environmental Review*

This document does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under [24 CFR §50.19\(c\)\(1\)](#), this document is categorically excluded from environmental review under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321](#)).

### *FAMILY ELIGIBILITY AND SELECTION*

HUD-VASH eligible families consist of homeless veterans and their families. The Appropriations Acts have provided for statutory or regulatory waivers or alternative requirements upon a finding by the Secretary that such waivers or alternatives are necessary for the effective administration and delivery of voucher assistance (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). The December 17, 2007, Explanatory Statement for the 2008 Appropriation Act provides, "The Appropriations Committees expect that these vouchers will be made available to all homeless veterans, including recently returning veterans." <sup>[1]</sup> Section 8(o)(19) of the United States Housing Act of 1937 (USHA of 1937), which requires homeless veterans to have chronic mental illnesses or chronic substance use disorders with required treatment of these disorders as a condition of receipt of HUD-VASH assistance, is waived.

### *Eligibility Determination*

By agreeing to administer the HUD-VASH program, TDHCA is relinquishing its authority to determine the eligibility of families in accordance with regular HCV program rules and PHA policies with the exceptions of income eligibility and lifetime sex offender status. Specifically, under the HUD-VASH program, PHAs will not have the authority to screen any potentially eligible family members or deny assistance for any grounds permitted under [24 CFR §982.552](#) (broad denial for violations of HCV program requirements) and [§982.553](#) (specific denial for criminal activity and alcohol abusers), with one exception.

PHAs will still be required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. However, unless the family member that is subject to lifetime registration under a state sex offender registration program is the homeless veteran (which would result in denial of admission for the family), the remaining family member/s may be served if the family agrees to remove the sex offender from its family composition.

Accordingly, HUD is exercising its authority to waive [42 U.S.C. 1437](#)d(s); [42 U.S.C. 13661](#)(a), (b), and (c); and [24 CFR §§982.552](#) and 982.553 regarding the denial of admission, except for 982.553(a)(2)(i), which requires denial of admission to certain registered sex offenders. These provisions also apply to PBV assistance.

Eligibility determination and veteran selection is done by the VAMC, DSP, or TDHCA, as described later in this section. In the case of the VAMC or DSP, HUD-VASH eligible families are referred to the partnering PHA for the issuance of a voucher or selection for a PBV unit. As stated above, TDHCA will accept these referrals, and written documentation of these referrals must be maintained in the tenant file at TDHCA.

PHAs are not authorized to maintain a waiting list or apply local preferences for the HUD-VASH program. Instead, VA case managers refer HUD-VASH eligible families to TDHCA for the issuance of a HUD-VASH voucher or project-based assistance.

#### *Use of Project-Based Unit*

If a HUD-VASH-eligible family is referred and there is an available PBV unit that is not exclusively made available to HUD-VASH families, TDHCA may also offer to refer the family to the owner for occupancy of that unit if allowable under the selection policy applicable to that project, and the owner and PHA may amend the PBV HAP contract to designate the PBV unit as a HUD-VASH PBV unit. Accordingly, sections 8(o)(6)(A) and (B) and 8(o)(13)(J) of the USHA of 1937, [42 U.S.C. 1437](#)f(o)(6)(A) and (B) and (o)(13)(J), regarding preferences, have been waived to provide for the effective administration of the program. In addition, [24 CFR §§982.202](#), 982.204, 982.207, and 983.251 relating to applicant selection from the waiting list and local preferences, are also waived. Section 983.251(a)(4), which disallows renting to relatives except when it may be necessary as a reasonable accommodation, is not waived. Note that [24 CFR §982.202](#)(b)(3) (Family characteristics); [24 CFR §982.202](#)(d) (Admission policy); and [24 CFR §983.251](#)(a)(3) (VAWA applies to admission to the project-based voucher program) continue to apply. Sections 982.203, 982.205, and 982.206 regarding special admissions, cross-listing of the waiting list, and opening and closing the waiting list do not apply to the HUD-VASH program.

#### *PHA in role of DSP*

The VA may approve a PHA with unleased HUD-VASH vouchers as a DSP for the purposes of veteran selection and intake. This DSP approval allows a PHA to issue a HUD-VASH voucher to a veteran without a referral from the VA. TDHCA is responsible for determining the veteran is eligible for VA HUD-VASH case management. TDHCA will refer the veteran to the VA for case management and must provide temporary case management until the VAMC has completed intake of the veteran. PHAs approved under this authority must ensure that while using unleased HUD-VASH vouchers, they maintain sufficient HUD-VASH vouchers available to immediately issue a HUD-VASH voucher to veterans referred by the VA.

HUD and the VA will publish further guidance on the requirements for a PHA to be approved and additional details necessary for PHAs to implement this provision. Until such guidance is issued, PHAs may not be approved as DSPs.

#### *Verification of Social Security Numbers*

Regarding verifying Social Security Numbers (SSN) for homeless veterans and their family members, an original document issued by a federal or state government agency which contains the name of the individual and the SSN of the individual along with other unique identifying information of the individual is acceptable in accordance with [24 CFR §5.216](#)(g). In the case of the homeless veteran, TDHCA will accept the *Certificate of Release or Discharge from Active Duty* (DD-214) or the VA-verified *Application for Health Benefits* (10-10EZ) as verification of SSN and cannot require the veteran to provide an SSN card. These

documents must also be accepted for proof of age purposes in lieu of birth certificates or other PHA-required documentation. Please note that veterans are also issued photo identification cards by the VA. If such identification is required by TDHCA, these cards must be accepted by the Start Printed Page 53210 PHA in lieu of another type of government-issued photo identification. These cards may also be used to verify SSNs and date of birth.

### *Adding Family Members*

When adding a family member after the HUD-VASH family is admitted to the program, the rules of 24 CFR §982.551(h)(2) apply. Other than the birth, adoption, or court-awarded custody of a child, TDHCA will approve additional family members and may apply its regular screening criteria in doing so.\*\*\* Civil rights requirements cannot be waived.

### *Civil Rights and Veterans with Disabilities*

The HUD-VASH program is administered in accordance with applicable civil rights and fair housing requirements. These include applicable authorities under [24 CFR §§5.105\(a\)](#) and [982.53](#) including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act, the Americans with Disabilities Act, and HUD's Equal Access Rule.<sup>[2]</sup>

When HUD-VASH applicants or recipients include veterans with disabilities or family members with disabilities, HUD's reasonable accommodation requirements apply. These standards require PHAs to make a reasonable adjustment to rules, policies, practices, and procedures when it may be necessary to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy a dwelling, the common areas of a dwelling, or participate in or access a recipient's programs and activities. These standards extend to various aspects of program implementation, including, for example, denial or termination of assistance, initial search term of the HCV, initial lease term, and informal reviews and hearings. In the case of project-based assistance, this also includes providing structural changes to a unit or public or common use area when they may be needed as a reasonable accommodation for an applicant or participant or their household members with a disability. Other obligations include, for example, effective communication with persons with disabilities, physical accessibility requirements, and overall nondiscrimination in the administration of the program.\*

### *Income Eligibility*

TDHCA will determine income eligibility for HUD-VASH families in accordance with [24 CFR §982.201](#). Income targeting requirements of section 16(b) of the USHA of 1937, as well as [24 CFR §982.201\(b\)\(2\)](#), do not apply for HUD-VASH families so that participating PHAs can effectively serve the eligible population specified in the Appropriations Acts; that is, homeless veterans, who may be at a variety of income levels, including low-income. TDHCA may, however, choose to include the admission of extremely low-income HUD-VASH families in its income targeting numbers for the fiscal year in which these families are admitted. In conformance with normal program rules, PHAs may not deny admission to a family with zero income and must consider hardship circumstances before charging a minimum rent in accordance with [24 CFR §5.630\(b\)](#).

### *Initial Search Term of the Voucher*

Recognizing the challenges that HUD-VASH participants may face with their housing search, HUD-VASH vouchers must have an initial search term of at least 120 days. Therefore, [24 CFR §982.303\(a\)](#), which states that the initial search term must be at least 60 days, shall not apply, since the initial term must be

at least 120 days. Any extensions, suspensions, and progress reports will remain under the policies in TDHCA's administrative plan but will apply after the minimum 120-day initial search term. Extensions of search terms may also be needed as a reasonable accommodation for a household with a member with a disability, such as for example, due to the difficulty in finding a unit that meets one's disability-related needs, *e.g.*, physically accessible unit, unit near accessible transportation, unit near medical or other facilities.

### *Initial Lease Term*

Under the HCV program, voucher participants must enter an initial lease with the owner for at least one year, unless a shorter term would improve housing opportunities for the tenant and the shorter term is a prevailing market practice. To provide a greater range of housing opportunities for HUD-VASH voucher holders, initial leases may be less than 12 months; therefore, both section 8(o)(7)(A) of the USHA of 1937, [42 U.S.C. 1437f\(o\)\(7\)\(A\)](#), and [24 CFR §982.309\(a\)\(2\)\(ii\)](#) are waived. Note that this waiver does not apply to PBVs.

### *Ineligible Housing*

HUD-VASH families will be permitted to live on the grounds of a VA facility in units developed to house homeless veterans. This applies to both tenant-based assistance and PBV. Therefore, [24 CFR §§982.352\(a\)\(5\)](#) and [982.352\(a\)\(2\)](#), which prohibit units on the physical grounds of a medical, mental, or similar public or private institution, are waived for that purpose only.

### *Mobility and Portability of HUD-VASH Vouchers*

An eligible family issued a HUD-VASH voucher must receive case management services provided by the partnering VAMC or DSP. Therefore, special mobility and portability procedures must be established. HUD-VASH participant families may reside only in those jurisdictional areas that are accessible to case management services as determined by the VAMC or DSP. Since the VAMC or DSP will be identifying homeless veterans eligible to participate in the HUD-VASH program, section 8(r)(1)(B)(i) of the USHA of 1937, [42 U.S.C. 1437f\(r\)\(1\)\(B\)\(i\)](#), which restricts portability in cases where the family did not reside in the jurisdiction of TDHCA at the time of application for HCV assistance, and [24 CFR §982.353\(a\)](#), (b), and (c), which affects where a family can lease a unit with HCV assistance, do not apply. HUD may publish PIH notices from time to time to further explain portability requirements under the HUD-VASH program.

#### *1. Portability Moves Within Same Catchment Area or Area of Operation Where Case Management is Provided by the Initial PHA's Partnering VAMC or DSP.*

If the family initially leases up, or moves, under portability provisions, but the initial PHA's partnering VAMC or DSP will still be able to provide the necessary case management services due to the family's proximity to the partnering VAMC or DSP, the receiving PHA must process the move in accordance with the portability procedures of [24 CFR §982.355](#). However, since the initial PHA must maintain records on all HUD-VASH families receiving case management services from its partnering VAMC or DSP, receiving PHAs without a HUD-VASH program must bill the initial PHA. Therefore, [24 CFR §982.355\(d\)](#), which gives the receiving PHA the option to absorb the family into its own HCV program or bill the initial PHA, is not applicable.

#### *2. Portability Moves Within Same Catchment Area Where Both PHAs Have Received HUD-VASH Vouchers.*

The receiving PHA may bill the initial PHA or absorb the family into its own HUD-VASH program if the VAMC or DSP providing the initial case management agrees to the absorption by the receiving PHA and the transfer of Start Printed Page 53211 case management. The absorption will also entail the availability of a HUD-VASH voucher and case management provision by the receiving PHA's partnering VAMC or DSP.

### *3. Portability Moves Where Receiving PHA is Beyond Catchment Area*

If a family wants to move to another jurisdiction where it will not be possible for the initial PHA's partnering VAMC or DSP to provide case management services, the VAMC or DSP must first determine that the HUD-VASH family could be served by another VAMC or DSP that is participating in this program, and the receiving PHA must have a HUD-VASH voucher available for this family. In these cases, the family must be absorbed by the receiving PHA either as a new admission (upon initial participation in the HUD-VASH program) or as a portability move-in (after an initial leasing in the initial PHA's jurisdiction). Upon absorption, the initial PHA's HUD-VASH voucher will be available to lease to a new HUD-VASH eligible family, as determined by the partnering VAMC or DSP, and the absorbed family will count toward the number of HUD-VASH slots awarded to the receiving PHA.

When the receiving PHA completes the *Family Report* (HUD-50058) under the scenario described above, the action type that must be recorded on line 2a is "1" for a new admission (a family that is new to the HCV program) or "4" for a portability move-in (a family that was previously leased up in the jurisdiction of the initial PHA). Whether the family is a new admission or portability move-in, in section 12 of the HUD-50058, line 12d is always marked "Y." In cases of portability where families move out of the catchment area of the initial PHA, 12e must be 0 since the family must be absorbed, and 12f must be left blank.

### *4. Portability Moves Where Receiving PHA is Beyond Catchment Area for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking.*

Veterans who request to port beyond the catchment area of the VAMC or DSP where they are receiving case management to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believes him- or herself to be threatened with imminent harm from further violence by remaining in the dwelling unit (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move), may port prior to receiving approval from the receiving VAMC or DSP. The initial PHA must follow its emergency transfer plan as described in [24 CFR §5.2005\(e\)](#). PHAs may require verbal self-certification or a written request from a participant seeking a move beyond the catchment area of the VAMC or DSP.

The verbal self-certification or written request must include either, a statement expressing why the participant reasonably believes that there is a threat of imminent harm from further violence if the participant were to remain in the same dwelling unit assisted under TDHCA; or a statement that the tenant was a sexual assault victim and that sexual assault occurred on the premises during the 90-day period preceding the participant's request for the move. The veteran escaping violence must be admitted to the VAMC or DSP's caseload. The participant must still port to a PHA that has a HUD-VASH program; if the receiving PHA does not have a HUD-VASH voucher available to lease, they may bill the initial PHA until a HUD-VASH voucher is available, at which point the porting veteran must be absorbed into the receiving PHA's program.

### *5. Portability Moves When Case Management is No Longer Required.*

If the family no longer requires case management, as determined by the VAMC or DSP, there are no portability restrictions. PHAs must follow the regulatory requirements for portability found at [24 CFR §982.355](#). When completing the HUD-50058, the family will continue to be coded "VASH" on line 2n unless the family has been moved to a regular voucher, in which case the code in 2n would be left blank.

#### *Case Management Requirements*

The VAMC or DSP's responsibilities include:

1. The screening of homeless veterans to determine whether they meet the HUD-VASH program participation criteria established by the VA national office;
2. Assisting veterans with TDHCA application and assisting the veteran family with obtaining needed PHA documentation to ensure rapid voucher issuance;
3. Referrals of homeless veterans to TDHCA;
4. Providing case management and supportive services to potential HUD-VASH program participants, as needed, prior to PHA issuance of rental vouchers;
5. Providing housing search assistance to HUD-VASH participants with rental vouchers;
6. Identifying the social service and medical needs of HUD-VASH participants and providing, or ensuring the provision of, regular ongoing case management, outpatient health services, hospitalization, and other supportive services, as needed, throughout this initiative; and
7. Maintaining records and providing information for evaluation purposes, as required by HUD and the VA.

As a condition of HCV rental assistance, both tenant-based assistance and PBV, a HUD-VASH eligible veteran must receive the case management services noted above, as needed, directly from or arranged by, the VAMC or DSP. The VAMC or DSP, in consultation with the veteran, is responsible for determining if case management is required and if the case management requirement is satisfied. If a veteran no longer requires case management, but maintains their HUD-VASH voucher assistance, the VAMC or DSP will maintain contact with the veteran family to provide support and planning assistance with the recertification and re-inspection process. The VAMC or DSP case manager will remain available to provide support to the veteran family, as needed.

#### *Termination of Assistance*

There are two alternative requirements for termination of assistance for HUD-VASH participants. As detailed above, HUD-VASH voucher assistance is contingent upon participation in case management, as required by the VAMC or DSP. If the VAMC or DSP has determined that a veteran is not participating in required case management, without good cause, TDHCA will terminate the family from the HUD-VASH program. However, a VAMC or DSP determination that the veteran does not require or no longer requires case management is not grounds for termination of voucher or PBV assistance. In such case, and at its option, TDHCA may offer the family continued assistance through one of its regular vouchers, to free up the HUD-VASH voucher for another eligible family referred by the VAMC or DSP. If TDHCA has no voucher to offer, the family will retain its HUD-VASH voucher, or PBV unit, until such time as TDHCA has an available voucher for the family. If the family no longer requires case management, there are no portability restrictions. Normal portability rules apply. Second, PHAs may terminate a family evicted from housing assisted under the program for a serious violation of the lease, but they are not required to do so.

As such, the regulation at [24 CFR §982.552](#)(b)(2) is amended to state, “TDHCA may terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease.” Prior to terminating HUD-VASH participants, HUD strongly encourages PHAs to exercise their discretion under [24 CFR §982.552](#)(c)(2) and consider all relevant circumstances of the specific case, as well as including the role of the case manager and the impact that ongoing case management services can have on mitigating the conditions that led to the potential termination, prior to determining whether to terminate assistance.

PHAs also must grant reasonable accommodations for persons with disabilities in accordance with [24 CFR Part 8](#). In addition, a HUD-VASH participant family must not be terminated after admission, for a circumstance or activity that occurred before admission and was known to TDHCA but could not be considered at the time of admission due to the HUD-VASH Operating Requirements. TDHCA can only

terminate the family's assistance for program violations that occur after the family's admission to the voucher program.

Generally, in the case of a family break-up, the HUD-VASH assistance must stay with the HUD-VASH veteran. However, in the case of domestic violence, dating violence, sexual assault, or stalking, in which the HUD-VASH veteran is the perpetrator, the victim must continue to be assisted. Upon termination of the perpetrator's HUD-VASH voucher due to the perpetrator's acts of domestic violence, dating violence, sexual assault, or stalking, the victim must be given a regular HCV if one is available, and the perpetrator's HUD-VASH voucher must be used to serve another eligible veteran family. If a regular HCV is not available for the victim, the perpetrator must be terminated from assistance, and the victim will continue to utilize the HUD-VASH voucher.

#### *Turnover of HUD-VASH Vouchers*

In accordance with the Appropriations Acts, upon turnover, HUD-VASH vouchers must be issued to homeless veteran families as identified by the VAMC or DSP, as noted above.

#### *Moving-to-Work (MTW) Agencies*

HUD-VASH vouchers may be administered in accordance with flexibilities approved under PHA's Standard MTW Agreement or MTW Operations Notice with approval from HUD's Housing Choice Voucher office. PHAs must submit a request through their local field office to operate HUD-VASH in accordance with approved MTW flexibilities. Requests will be approved provided the flexibilities do not conflict with the stated HUD-VASH program requirements. However, these vouchers are never eligible for MTW fungibility. HUD-VASH vouchers must be reported in the IMS/PIC system on either the regular HUD-50058 or HUD-MTW 50058 for vouchers under the agency's MTW Agreement.

#### *Project-Based Assistance*

Section 8(o)(13)(D) of the USHA of 1937 ([42 U.S.C. 1437\(o\)\(13\)\(D\)](#)), as amended by Section 106(a)(3) of the Housing Opportunities Through Modernization Act (HOTMA) ([Pub. L. 114-201](#), 130 Stat. 782), is waived for HUD-VASH vouchers so that all units exclusively made available to HUD-VASH families in a PBV project are exempted from the PBV income-mixing requirements (project cap). The project cap refers to the number of units in a project that may receive PBV assistance and is generally the higher of 25 units or 25% of units in the project. Units exclusively made available to HUD-VASH families are excluded from (do not count against) this PBV project cap. Additionally, HUD-VASH supportive services only need to be provided to all HUD-VASH families in the project, not all families receiving PBV assistance in the project. If a HUD-VASH family does not require or no longer requires case management, the unit continues to count as an excepted PBV unit for as long as the family resides in that unit. Likewise, Section 8(o)(13)(B) of the USHA of 1937, [42 U.S.C. 1437f\(o\)\(13\)\(B\)](#)), as amended by Section 106(a)(2) of HOTMA, is waived for HUD-VASH vouchers so that HUD-VASH units made available under a competitive PIH notice for HUD-VASH PBV units, are exempt from the PBV program limitation. This exception only applies to HUD-VASH PBV vouchers awarded through the HUD-VASH PBV set-aside process. All other HUD-VASH vouchers that TDHCA opts to project-base, are still subject to the PBV program limitation.

Pursuant to the HUD-VASH case management and termination requirements, a HUD-VASH family's PBV assistance must be terminated for failure to participate in case management as required by the VAMC or DSP. Upon notification by the VAMC or DSP of the family's failure to participate, without good cause, in case management, TDHCA will provide the family a reasonable time period (as established by TDHCA) to vacate the unit. TDHCA will terminate assistance to the family at the earlier of (1) the time the family vacates or (2) the expiration of the reasonable time period given to vacate (the lease terminates at the same time as termination of assistance per [24 CFR §983.256\(f\)\(3\)\(v\)](#)). If the family fails to vacate the unit within the established time, the owner may evict the family. If the owner does not evict the family, TDHCA

will remove the unit from the HAP contract or amend the HAP contract to substitute a different unit in the project if the project is partially assisted. A PHA may add the removed unit to the HAP contract after the ineligible family vacates the property.

If a HUD-VASH family is eligible to move from its PBV unit and there is no HUD-VASH tenant-based voucher available at the time the family requests to move, TDHCA may require a family that still requires case management to wait for a HUD-VASH tenant-based voucher for a period not to exceed 180 days. If a HUD-VASH tenant-based voucher is still not available after that time period, the family must be allowed to move with its HUD-VASH voucher. Alternatively, TDHCA may allow the family to move with its HUD-VASH voucher without having to meet this 180-day waiting period. In either case, TDHCA may either replace the assistance in the PBV unit with one of its regular vouchers if the unit is eligible for a regular PBV (for instance, so long as the unit is not on the grounds of a medical facility and so long as the unit is eligible under TDHCA's program and project caps) or TDHCA and owner may agree to temporarily remove the unit from the HAP contract. If a HUD-VASH veteran has been determined to no longer require case management, TDHCA will allow the family to move with the first available tenant-based voucher if no HUD-VASH voucher is immediately available and cannot require the family to wait for a HUD-VASH voucher to become available.

Under HOTMA, PHAs no longer need authorization from HUD to convert tenant-based HUD-VASH vouchers to project-based HUD-VASH vouchers. However, PHAs must consult with the partnering VAMC or DSP to ensure approval of the project. PHAs and the partnering VAMC or DSP are expected to communicate regarding the PBV planning and development. PHAs may project-base HUD-VASH vouchers in projects alongside other PBV units (the other PBV units must be attached in accordance with PBV requirements) and may execute a single HAP contract covering both the HUD-VASH PBVs and the other PBVs. In the description of units in Exhibit A of the HAP contract, PHAs must indicate the number of units that will be exclusively made available to HUD-VASH families. TDHCA will refer only HUD-VASH families to PBV units exclusively made available to HUD-VASH families and to PBV units funded through a HUD-VASH PBV set-aside award. TDHCA and owner may agree to amend a PBV HAP contract to re-designate a regular PBV unit as a unit specifically designated for HUD-VASH families, so long as TDHCA first consults with the VAMC or DSP. Additionally, TDHCA and owner may agree to amend a PBV HAP contract to re-designate a unit specifically designated for HUD-VASH families as a regular PBV unit, so long as the unit is not funded through a HUD-VASH PBV set-aside award and is eligible for a regular PBV (for instance, the unit is not on the grounds of a medical facility and the unit is eligible under TDHCA's program and project caps).

**PBV project selection for HUD-VASH must follow all regular project selection regulations.**

#### *Section Eight Management Assessment Program (SEMAP)*

HUD-VASH vouchers will remain excluded from the SEMAP leasing indicator. Therefore, [24 CFR 985.3\(n\)\(1\)\(i\)](#) and (ii) are still waived. During the calendar year, the prorated budget authority available for HUD-VASH vouchers and the units associated with that budget authority will be excluded from the denominators for both units leased, and dollars expended.

#### *Reallocation of HUD-VASH Vouchers*

Under the Appropriation Acts, Congress has directed VA and HUD to collaboratively allocate HUD-VASH vouchers based on current geographical need for such assistance. In recognition that there may be changes and shifts in the population of homeless veterans over time, it may become necessary for the VA and HUD to jointly reallocate HUD-VASH vouchers to better address the current needs of the homeless veteran population. This reallocation may be done in one of two ways. If there is continued need at the VAMC or DSP, HUD-VASH vouchers may be voluntarily moved between PHAs administering HUD-VASH

programs within the same VAMC or DSP catchment area. Alternatively, if it has been determined that a VAMC or DSP no longer has sufficient need and will not be able to utilize their available HUD-VASH vouchers, HUD and VA may choose to jointly recapture HUD-VASH vouchers from the VAMC or DSP and any partnering PHA(s). Recaptured vouchers, and any associated funding, will be reallocated through a national allocation process, to areas with current need. HUD will issue additional PHA guidance on both HUD-VASH voucher voluntary moves within a VAMC or DSP and the HUD-VASH recapture processes.

### *HQS Inspections*

To expedite the leasing process for tenant-based HUD-VASH, PHAs may pre-inspect available units that veterans may be interested in leasing to maintain a pool of eligible units. If a HUD-VASH family selects a unit that passed a HQS inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval (form HUD-52517), the unit may be approved as long as it meets all other conditions under [24 CFR 982.305](#). As required by [24 CFR §982.353\(e\)](#), a PHA is prohibited from directly or indirectly reducing the family's opportunity to select among all available units. All regulatory requirements pertaining to HQS found at [24 CFR §982.401](#) apply to HUD-VASH.

### *Exception Payment Standards*

Many housing markets with a high need for HUD-VASH are very competitive with a shortage of affordable rental units. In addition, landlords may be reluctant to rent to homeless individuals due to poor credit history or other issues. To assist HUD-VASH participants in finding affordable housing, especially in competitive markets, HUD is waiving [24 CFR §982.503\(a\)\(3\)](#) to allow a PHA to establish a HUD-VASH exception payment standard. Without this waiver, a PHA is required to establish a single payment standard amount for each unit size. Additionally, §982.503(b)(iii) is waived so that PHAs may go up to, but no higher than 120% of the published metropolitan area-wide FMRs or Small Area FMRs (based on which FMRs TDHCA is applying) specifically for HUD-VASH families. A PHA that wants to establish a HUD-VASH exception payment standard over 120% must still request a waiver from HUD through the regular waiver process outlined in notice PIH 2018-16, or any successor notices. Exception payment standards implemented by TDHCA under this Section also apply in determining rents for PBV projects with units exclusively made available to HUD-VASH families (see [24 CFR §983.301](#)).

### *Special Housing Types*

Special housing types can be particularly useful to HUD-VASH clients, as it can increase the availability of housing, and for some veterans, can be a better housing environment than a single-family unit. As such, PHAs must permit HUD-VASH clients to use the following special housing types for tenant-based HUD-VASH assistance, regardless of whether these types are permitted in their administrative plan for other families: single room occupancy (SRO); congregate housing; group home; shared housing; and cooperative housing. Regulations for these housing types can be found at [24 CFR Part 982](#), subpart M. Consistent with the regulations, HUD-VASH PBV can never be applied to shared housing.

### *Reporting Requirements*

The VASH code was established for use on line 2n of the Family Report (form HUD-50058) or 2p of the MTW 50058, to indicate if the family participates in a special program. The information collection requested on both Family Reports has been approved by the Office of Management and Budget (OMB) and given OMB control number 2577-0083. No person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid OMB control number. This code must remain on the HUD-50058 and MTW 50058 for the duration of the HUD-VASH family's participation in the program. TDHCA that administers the HUD-VASH voucher on behalf of the family

(regardless of whether TDHCA has received an allocation of HUD-VASH vouchers) must enter and maintain this code on the HUD-50058 or MTW 50058.

# CHAPTER 18: CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY (CARES) ACT POLICY CHANGES IN EFFECT DURING COVID-19

## PART I: BACKGROUND

This chapter has been added to the Administrative Plan to incorporate the temporary changes made to the program's administration and operation during the COVID-19 pandemic.

On March 27, 2020, the CARES Act (Public Law 116-136) was signed into law and included special provisions for federally assisted housing programs, including HCV programs.

On April 10, 2020, HUD issued a compilation of waivers and alternative requirements in PIH Notice 2021-14 under the authority of the CARES Act that allows housing authorities to make policy changes to administration and operation of their HCV program. HUD strongly encourages PHAs to utilize any and all as necessary to keep Public Housing and HCV programs operational to the extent practicable. HUD also encouraged PHAs to utilize waivers and alternative requirements to expand housing assistance opportunities, including to families on waiting lists, providing affordable, safe housing during this time assists in addressing issues like homelessness and overcrowding that contribute to risk factors during the COVID-19 pandemic.

These temporary changes shall be effective until the expiration of the applicable HUD COVID-19 waivers except as otherwise noted. The following are the temporary changes made to the Department's HCV program based on the HUD waivers elected:

**The Emergency Housing Voucher program, described in Chapter 19, is excluded from the waivers and alternative requirements identified in this Chapter 18.**

With so many PHAs operating remotely, HUD provided a waiver that PHAs could adopt regarding the income, citizenship, social security numbers, Enterprise Income Verification (EIV) monitoring requirements, Housing Quality Standards Inspections, PHA Plan, and SEMAP.

No later than December 31, 2021, the Department will resume:

- Initial pre-HAP inspections (for both HCV and PBV)
- Scheduled biennial (or triennial) inspections
- Regular procedures for interim inspections
- Inspecting units that have passed a prior alternative inspection
- Initial HQS inspections for units that families wish to purchase under the HCV homeownership option
- Self-certification for income verification at admission
- Self-certification for family composition during the annual reexaminations and interim reexaminations

## PART II: CHART OF WAIVERS AND ALTERNATIVE REQUIREMENTS

The following charts summarize the waivers authorized under **PIH Notice 2020-05**, the availability period for each, and which waivers have been utilized by the Department as amendments to the policy sections, as permitted by Congress in the CARES Act and implemented by HUD in PIH Notice 2020-05 (issued April 10, 2020), PIH Notice 2020-33 REV2 (issued November 30, 2020), and PIH Notice 2021-14 (issued May 4, 2021). Some of the waivers listed below are used only as needed. PHA staff will continue to evaluate the

need to adopt other available waivers. The temporary policies described below temporarily replace the policies and procedures in the Administrative Plan. Unless otherwise stated in the applicable waiver, these policies remain in effect until the expiration of the applicable HUD COVID-19 waivers. TDHCA has adopted the waivers of policies and procedures listed below during the COVID-19 pandemic, for the following reasons:

- To continue providing safe, affordable, quality housing to the participants in the Housing Choice Voucher program; and
- To protect the health and safety of the participants, PHA staff, service providers, and the community, to the greatest extent feasible.

In the table below the written documentation required by HUD of the waivers used by TDHCA is reflected in the last two columns. These waivers apply not only to assistance provided through the CARES Act, but also to TDHCA's regular Rental Assistance, Project Access (PA), Non-Elderly Disabled (NED), Mainstream (MS5) and VASH vouchers.

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
<b>PH and HCV-1 PHA 5-Year and Annual Plan</b>	<u>Statutory Authority</u> Section 5A(a)(1), Section 5A(b)(1), Section 5A(g), Section 5A(h)  <u>Regulatory Authority</u> § 903.5(a)(3), 903.5(b)(3), 903.21	<ul style="list-style-type: none"> <li>• Alternative dates for submission</li> <li>• Changes to significant amendment process</li> </ul>	<ul style="list-style-type: none"> <li>• Varies based on FYE</li> <li>• 7/31/20</li> </ul> HUD revised 12/31/20	Yes.  Because TDHCA's PHA FYE is 12/31, the 2022 PHA Plan will be submitted no later than 1/16/22.  No changes needed.	4/10/2020
<b>HQS-1 Initial inspection</b>	<u>Statutory Authority</u> Section 8(o)(8)(A)(i), Section (o)(8)(C)  <u>Regulatory Authority</u>	<ul style="list-style-type: none"> <li>• Changes initial inspection requirements, allowing for owner certification that there are no life-threatening deficiencies</li> </ul> Where self-certification was used, PHA must	<ul style="list-style-type: none"> <li>• 7/31/20</li> <li>• 10/31/20</li> </ul>	<b>Yes</b>  1-year anniversary of the date of the	5/11/2021

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
	§ 982.305(a), 982.305(b), 982.405	inspect the unit no later than June 30, 2022.	<ul style="list-style-type: none"> <li>• HUD revised 6/30/22</li> </ul>	owner's certification.	
<b>HQS-2: PBV Pre-HAP Contract Inspections, PHA acceptance of completed units</b>	<u>Statutory Authority:</u> Section 8(o)(8)(A)  <u>Regulatory Authority:</u> §§ 983.301(b), 983.156(a)(1)	<ul style="list-style-type: none"> <li>• Changes inspection requirements, allowing for owner certification that there are no life-threatening deficiencies</li> <li>• Where self-certification was used, PHA must inspect the unit no later than June 30, 2022.</li> </ul>	<ul style="list-style-type: none"> <li>• 7/31/20</li> <li>• 10/31/20</li> <li>• HUD revised 6/30/22</li> </ul>	Yes  1-year anniversary of the date of the owner's certification.	5/11/2021
<b>HQS-3 Non-Life Threatening HQS - Initial Unit Approval</b>	<u>Statutory Authority</u> Section 8(o)(8)(A)(ii)  <u>Regulatory Authority</u> HOTMA HCV Federal Register Notice January 18, 2017	<ul style="list-style-type: none"> <li>• Allows for extension of up to 30 days for owner repairs of non-life threatening conditions</li> </ul>	<ul style="list-style-type: none"> <li>• 7/31/20</li> <li>• HUD revised 12/31/21</li> </ul>	Yes  The extension making the NLT repairs may extend beyond December 31, 2020, depends on the date TDHCA approved the extension. (30-Days additional)	5/11/2021
<b>HQS-4 Initial HQS - Alternative Inspections</b>	<u>Statutory Authority</u> Section 8(o)(8)(A)(iii)	<ul style="list-style-type: none"> <li>• Under Initial HQS Alternative Inspection Option - allows for</li> </ul>	<ul style="list-style-type: none"> <li>• 7/31/20</li> </ul>	Yes	5/11/2021

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
	<p><u>Regulatory Authority</u></p> <p>HOTMA HCV Federal Register Notice January 18, 2017</p>	<p>commencement of assistance payments based on owner certification there are no life-threatening deficiencies</p> <ul style="list-style-type: none"> <li>Where self-certification was used, PHA must inspect the unit no later than June 30, 2022.</li> </ul>	<ul style="list-style-type: none"> <li>10/31/20</li> <li>HUD revised 6/30/22</li> </ul>	<p>1-year anniversary of the date of the owner's certification.</p>	
<p><b>HQS-5</b></p> <p><b>Biennial Inspections</b></p>	<p><u>Statutory Authority</u></p> <p>Section 8(o)(D)</p> <p><u>Regulatory Authority</u></p> <p>§§ 982.405(a), 983.103(d)</p>	<ul style="list-style-type: none"> <li>Allows for delay in biennial inspections</li> <li>All delayed biennial inspections must be completed as soon as reasonably possible but by no later than June 30, 2022.</li> </ul>	<ul style="list-style-type: none"> <li>10/31/20</li> <li>HUD revised 6/30/22</li> </ul>	<p>Yes</p> <p>1 year after the date the biennial inspection would have been required absent the waiver.</p>	<p>5/11/2021</p>
<p><b>HQS-6</b></p> <p><b>Interim Inspections</b></p>	<p><u>Statutory Authority</u></p> <p>Section 8(o)(8)(F)</p> <p><u>Regulatory Authority</u></p> <p>§§ 982.405(g), § 983.103(e)</p>	<ul style="list-style-type: none"> <li>Waives the requirement for TDHCA to conduct interim inspection and requires alternative method</li> <li>Allows for repairs to be verified by alternative methods</li> </ul>	<ul style="list-style-type: none"> <li>7/31/20</li> <li>HUD revised 12/31/21</li> </ul>	<p>Yes</p> <p>HQS inspection in accordance with the applicable time periods upon notification by a family or government official that the assisted unit does not</p>	<p>5/11/2021</p>

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
				comply with the HQS.	
<b>HQS-7 PBV Turnover Inspections</b>	<u>Regulatory Authority</u> § 983.103(c)	<ul style="list-style-type: none"> <li>Allows for PBV turnover units to be filled based on owner certification there are no life-threatening deficiencies</li> <li>Allows for delayed full HQS inspection NLT than 6/30/22</li> </ul>	<ul style="list-style-type: none"> <li>7/31/20</li> <li>10/31/20</li> <li>HUD revised 6/30/22</li> </ul>	Yes  1-year anniversary of the date of the owner's certification.	5/11/2021
<b>HQS-8: PBV HAP Contract – HQS Inspections to Add or Substitute Units</b>	<u>Statutory Authority</u> Section 8(o)(8)(A)  <u>Regulatory Authority</u> §§ 983.207(a), 983.207(b)	<ul style="list-style-type: none"> <li>Allows for PBV units to be added or substituted in the HAP contract based on owner certification there are no life-threatening deficiencies</li> <li>Allows for delayed full HQS inspection NLT 6/30/22</li> </ul>	<ul style="list-style-type: none"> <li>7/31/20</li> <li>10/31/20</li> <li>HUD revised 6/30/22</li> </ul>	Yes  1-year anniversary of the date of the owner's certification.	5/11/2021
<b>HQS-9 HQS QC Inspections</b>	<u>Regulatory Authority</u> § 982.405(b)	<ul style="list-style-type: none"> <li>Provides for a suspension of the requirement for QC sampling inspections</li> </ul>	<ul style="list-style-type: none"> <li>10/31/20</li> <li>HUD revised 12/31/21</li> </ul>	Yes	5/11/2021
<b>HQS--10 HQS Space and Security</b>	<u>Regulatory Authority</u> § 982.401(d)	<ul style="list-style-type: none"> <li>Waives the requirement that each dwelling unit have at least 1 bedroom or living/sleeping room for each 2</li> </ul>	Remains in effect one year from lease term or date of notice,	Yes, on a case-by-case basis.  No changes revised	5/11/2021

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
		persons.	whichever is longer		
<b>HCV-6 Automatic Termination of the HAP Contract</b>	<u>Regulatory Authority</u> § 982.455	<ul style="list-style-type: none"> <li>Allows PHA to extend the period of time after the last HAP payment is made before the HAP contract terminates automatically.</li> </ul>	<ul style="list-style-type: none"> <li>12/31/21</li> </ul>	Yes  No changes revised	5/11/2021
<b>HCV-8 Utility Allowance Schedule</b>	<u>Regulatory Authority</u> § 982.517	<ul style="list-style-type: none"> <li>Provides for delay in updating utility allowance schedule</li> </ul>	<ul style="list-style-type: none"> <li>12/31/21</li> </ul>	Yes.  No changes revised	5/11/2021

# CHAPTER 19: EMERGENCY HOUSING VOUCHERS (EHV)

## INTRODUCTION

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARP) (P.L. 117-2). Section 3202 of the ARP appropriated \$5 billion for the creation, administration, and renewal of new incremental emergency housing vouchers (EHVs) and other eligible expenses related to COVID-19. PHAs may not project-based EHVs; EHVs are exclusively tenant-based assistance.

On May 5, 2021, HUD issued Notice PIH 2021-15, which described HUD's process for allocating approximately 70,000 EHVs to eligible PHAs and set forth the operating requirements for PHAs who administer them.

All applicable nondiscrimination and equal opportunity requirements apply to the EHV program, including requirements that TDHCA grant reasonable accommodations to persons with disabilities, effectively communicate with persons with disabilities, and ensure meaningful access for persons with limited English proficiency (LEP).

This chapter describes HUD regulations and PHA policies for administering EHVs. The policies outlined in this chapter are organized into six sections, as follows:

Part I: Funding

Part II: Partnering Agencies

Part III: Waiting List Management

Part IV: Family Eligibility

Part V: Housing Search and Leasing

Part VI: Use of Funds, Reporting, and Financial Records

## Part I: FUNDING OVERVIEW

The EHV Program provides administrative fees and funding for the costs of administering emergency housing vouchers (EHVs) and other eligible expenses defined in Notice PIH 2021-15. These fees may only be used for EHV administration and other eligible expenses and must not be used for or applied to other PHA programs or vouchers. TDHCA will maintain separate financial records from its regular HCV funding for all EHV funding.

### ***Housing Assistance Payments (HAP) Funding***

ARP funding obligated to TDHCA as housing assistance payments (HAP) funding may only be used for eligible EHV HAP expenses (i.e., rental assistance payments). EHV HAP funding may not be used for EHV administrative expenses or for the eligible uses under the EHV services fee. The initial funding term will expire December 31, 2022. HUD will provide renewal funding to TDHCA for the EHVs on a calendar year (CY) basis commencing with CY 2023, separately from the regular HCV program. All renewal funding for the duration of the EHV program has been appropriated as part of the ARP funding.

### ***Administrative Fee and Funding***

The following types of fees and funding are allocated as part of the EHV program:

- **Preliminary fees** support immediate start-up costs that TDHCA will incur in implementing alternative requirements under EHV, such as outreach and coordination with partnering agencies:
  - \$400 per EHV allocated to TDHCA, once the consolidated annual contributions contract (CACC) is amended.
  - This fee may be used for any eligible administrative expenses related to EHV.
  - The fee may also be used to pay for any eligible activities under EHV service fees.
  
- **Placement fees/expedited issuance reporting** fees will support initial lease-up costs and the added cost and effort required to expedite leasing of EHV. Placement/expedited issuance fees only apply to the initial leasing of the voucher; they are not paid for family moves or to turnover vouchers:
  - \$100 for each EHV initially leased, if TDHCA reports the voucher issuance date in Public Housing Information Center–Next Generation (PIC–NG) system within 14 days of voucher issuance or the date the system becomes available for reporting.
  - Placement fees:
    - \$500 for each EHV family placed under a HAP contract effective within four months Of the effective date of the ACC funding increment; or
    - \$250 for each EHV family placed under a HAP contract effective after four months but less than six months after the effective date of the ACC funding increment.
    - HUD will determine placement fees in the event of multiple EHV allocations and funding increment effective dates.
  
- **Ongoing administrative fees**, which are calculated in the same way as the standard HCV program. Ongoing EHV administrative fees may be subject to proration in future years, based on available EHV funding:
  - PHAs are allocated administrative fees using the full column A administrative fee amount for each EHV under contract as of the first day of each month.

### ***Service Fees***

Service Fees are a one-time fee to support PHAs' efforts to implement and operate an effective EHV services program. Services fee funding must be initially used for defined eligible uses and not for other administrative expenses of operating the EHV program. The amount allocated is \$3,500 for each EHV allocated. Service fees fall into four categories:

- Housing search assistance
- Security deposit/utility deposit/rental application/holding fee uses
- Owner-related uses
- Other eligible uses such as moving expenses or tenant-readiness services

### ***Eligible Uses***

The eligible uses, parameters and requirements for service fees include the following items. TDHCA will cap the amount of financial assistance paid out to service providers at \$3,500 per family.

- **Housing search assistance** may include activities such as, but not limited to helping a family identify and visit potentially available units during their housing search, helping to find a unit that meets the household's disability-related needs, providing transportation and directions, assisting with the completion of rental applications and TDHCA forms, and helping to expedite the EHV leasing process for the family.
- **Application fees/non-refundable administrative or processing fees/refundable application deposit assistance.**
- **Security deposit assistance** includes paying for some or all of the security deposit.
- **Utility deposit assistance/utility arrears** may be used for some or all of the family's utility deposit expenses. Assistance can be provided for deposits (including connection fees) required for the utilities to be supplied by the tenant under the lease. The utility deposit assistance must be paid directly to the utility company. In addition, some families may have large balances with gas, electric, water, sewer, or trash companies that will make it difficult if not impossible to establish services for tenant-supplied utilities. Utility assistance may also be provided to help address these utility arrears to facilitate leasing. The utility assistance must be paid directly to the utility company.
- **Owner recruitment and outreach for EHV**s includes a provider conducting owner recruitment and outreach specifically for EHV's. In addition to traditional owner recruitment and outreach, activities may include conducting pre-inspections or otherwise expediting the inspection process, providing enhanced customer service, and offering owner incentive and/or retention payments.
- **Moving expenses (including move-in fees and deposits)** provides assistance for some or all of the family's reasonable moving expenses when they initially lease a unit with the EHV. TDHCA will not provide moving expenses assistance for subsequent moves unless the family is required to move for reasons other than something the family did or failed to do (e.g., the TDHCA is terminating the HAP contract because the owner did not fulfill the owner responsibilities under the HAP contract or the owner is refusing to offer the family the opportunity to enter a new lease after the initial lease term, as opposed to the family choosing to terminate the tenancy in order to move to another unit), or a family has to move due to domestic violence, dating violence, sexual assault, or stalking, for example. TDHCA will cover the cost of storage expenses, including the cost of transporting a family's belongings to and from the storage facility, and lock changes when the family initially leases a unit with EHV.
- **Tenant-readiness services** helps tenants by creating customized plans to address or mitigate barriers that individual families may face in renting a unit with an EHV, such as negative credit, lack of credit, negative rental or utility history, or to connect the family to other community resources (including COVID-related resources) that can assist with rental arrears.
- **Essential household items** assist the family with some or all of the costs of acquiring essential household items as defined by TDHCA (e.g., tableware, bedding, etc.). TDHCA will cover the cost of furniture, but furniture paid for with EHV Service Fees remains the property of the tenant and not the property. TDHCA will cover the cost of refrigerators and stoves as an incentive to the owner to participate in the EHV program. Refrigerators and stoves, if covered as a property incentive, will remain with the owner after the tenant moves out.
- **Renter's insurance if required by the lease** may include some or all of the cost of renter's insurance, but only in cases where the purchase of renter's insurance is a condition of the lease.

Any services fee assistance that is returned to the TDHCA after the initial or subsequent use may only be used for the eligible service fee uses defined in the PIH Notice PIH 2021-15 or subsequent notices or other EHV administrative cost. Any amounts not expended for these eligible uses when TDHCA's EHV program ends must be remitted to HUD.

## **Part II: PARTNERING AGENCIES**

### **CONTINUUM OF CARE (CoC)**

PHAs that accept an allocation of EHV are required to enter into a memorandum of Understanding (MOU) with the Continuum of Care (CoC) to establish a partnership for the administration of EHV. TDHCA has entered into an MOU with each partnering Continuum of Care (CoC) or Local Planning Body (LPB) in the statewide allocation of the EHV that serve the EHV service area established by the Board.

### **OTHER PARTNERING ORGANIZATIONS**

TDHCA may, but is not required to, partner with other organizations trusted by persons experiencing homelessness, such as victim services providers (VSPs) and other community partners. If TDHCA chooses to partner with such agencies, TDHCA will either enter into an MOU with the partnering agency or the partnering agency may be added to the MOU between TDHCA and CoC.

### **REFERRALS**

#### *CoC and Partnering Agency Referrals*

The primary responsibility of the CoC under the MOU with TDHCA is to make direct referrals of qualifying individuals and families to TDHCA. TDHCA will generally refer a family that is seeking EHV assistance directly from TDHCA to the CoC or other referring agency for initial intake, assessment, and possible referral for EHV assistance. Partner CoCs are responsible for determining whether the family qualifies under one of the four eligibility categories for EHV.

The CoC or other direct referral partner must provide supporting documentation to TDHCA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance.

The CoC and/or partnering agencies will identify EHV-eligible individuals and families within the agency's jurisdiction and make referrals to the provider's Coordinated Entry system. The CoC and/or partnering agency will enter eligible EHV applicants onto the EHV waiting list established for the county region. The CoC and/or partnering agency must certify that the EHV applicants they referred meets at least one of the four EHV eligibility criteria, by using the certification forms provided by TDHCA. The CoC and/or partnering agency must provide the TDHCA Housing Agent with a copy of the applicant's certification for at time of selection from the waiting list.

The CoC and/or partnering agency must maintain a copy of the certification from the CoC and/or partnering agency in the applicant's file along with other eligibility paperwork.

As part of the MOU, TDHCA, and CoC and/or partnering agency identify staff positions to serve as lead EHV liaisons. All must commit sufficient staff and resources to ensure eligible individuals and families are identified and determined eligible in a timely manner.

### *Direct Referrals from CoC and Other Partnering Agencies*

The Department will accept referrals for EHV directly from CoCs that were identified using the CE System. CoCs upload application packets and backup documentation to TDHCA's secure server. CoC partners may also support applicants through the application process and attend meetings with applicants and PHAs to aid individuals and families through the admissions process. Direct referrals for EHV are not added to TDHCA's regular HCV.

EHV families are issued EHV as the result of either:

- The direct referral process from the CoC, or
- A situation where TDHCA makes an EHV available in order to facilitate an emergency transfer in accordance with the Violence Against Women Act (VAWA) as outlined in TDHCA's Emergency Transfer Plan. (PHAs are strongly encouraged to utilize EHV as a resource to effectuate emergency transfers for a victim of domestic violence, dating violence, sexual assault, or stalking, as part of their Violence Against Women Act (VAWA) Emergency Transfer Plan.)

## **PART III: WAITING LIST MANAGEMENT**

### **HCV WAITING LIST**

The regulation that requires TDHCA to admit applicants as waiting list admissions or special admissions in accordance with admission policies in Chapter 4 does not apply to PHAs operating the EHV program. Direct referrals are not added to TDHCA's regular HCV waiting list.

TDHCA informed families on the HCV waiting list of the availability of EHV by posting the information to its website and by mailing letters to all existing households on the HCV waiting list. The website and letters sent will describe the eligible populations to which EHV are limited, clearly state that the availability of these EHV is managed through a direct referral process, and advise the family to contact the CoC/referring service provider if the family believes they may be eligible for EHV assistance.

TDHCA will ensure effective communication with persons with disabilities, including those with vision, hearing, and other communication-related disabilities in accordance with Chapter 2. TDHCA will also take reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP) in accordance with Chapter 2.

### **EHV WAITING LIST**

The HCV regulations requiring TDHCA to operate a single waiting list for admission to the HCV program do not apply to PHAs operating the EHV program. Instead, when the number of applicants referred by the CoC and/ or Partnering agency exceeds the EHV available, TDHCA will maintain a separate waiting list for EHV referrals, both at initial leasing and for any turnover vouchers that may be issued prior to September 30, 2023. The EHV waiting list is not subject to PHA policies in Chapter 4 regarding opening and closing the HCV waiting list. TDHCA will work directly with its CoC and other referral agency partners to manage the number of referrals and the size of the EHV waiting list.

### **PREFERENCES**

If local preferences are established by TDHCA for HCV, they do not apply to EHV. The Department is choosing not to utilize any preferences within the EHV Program. Applicants on the HCV waiting list with a homeless preference will be referred to the CoC and/or other agency for the Coordinated Entry system.

## **PART IV: FAMILY ELIGIBILITY**

### **OVERVIEW**

The CoC or referring agency determines whether the individual or family meets any one of the four eligibility criteria described in Notice PIH 2021-15 and then refers the family to TDHCA. TDHCA determines that the family meets other eligibility criteria for the HCV program, as modified for the EHV program and outlined below.

### **TPS-IV.B. REFERRING AGENCY DETERMINATION OF ELIGIBILITY**

In order to be eligible for an EHV, an individual or family must meet one of four eligibility criteria:

- Homeless as defined in 24 CFR 578.3;
- At risk of homelessness as defined in 24 CFR 578.3;
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking (as defined in Notice PIH 2021-15), or human trafficking (as defined in the 22 U.S.C. Section 7102); or
- Recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability as determined by the CoC or its designee in accordance with the definition in Notice PIH 2021-15.

As applicable, the CoC or referring agency must provide documentation to TDHCA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance. TDHCA will retain this documentation as part of the family's file.

### **PHA SCREENING**

#### *Overview*

HUD waived 24 CFR 982.552 and 982.553 in part for the EHV applicants and established alternative requirement for mandatory and permissive prohibitions of admissions. Except where applicable, PHA policies regarding denials in Chapter 3 of this policy do not apply to screening individuals and families for eligibility for an EHV. Instead, the EHV alternative requirement listed in this section will apply to all EHV applicants.

The mandatory and permissive prohibitions listed in Notice PIH 2021-15 and in this chapter, however, apply only when screening the individual or family for eligibility for an EHV. When adding a family member after the family has been placed under a HAP contract with EHV assistance, the regulations at 24 CFR 982.551(h)(2) apply. Other than the birth, adoption, or court-awarded custody of a child, TDHCA will approve additional family members and may apply its regular HCV screening criteria in Chapter 3 in doing so.

#### *Mandatory Denials*

Under alternative requirements for the EHV program, mandatory denials for EHV applicants include:

- 24 CFR 982.553(a)(1)(ii)(C), which prohibits admission if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.
- 24 CFR 982.553(a)(2)(i), which prohibits admission to the program if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program.

The Department will deny admission to the program if any member of the family fails to sign and submit consent forms for obtaining information as required by 24 CFR 982.552(b)(3) but should notify the family of the limited EHV grounds for denial of admission first.

### *Permissive Denial*

Notice PIH 2021-15 lists permissive prohibitions for which TDHCA may, but is not required to deny admission to EHV families. The notice also lists prohibitions that, while allowable under the HCV program, may not be used to deny assistance for EHV families.

TDHCA will apply permissive prohibition to the screening of EHV applicants and has met with its CoC partner to understand the impact. Determinations using permissive prohibitions will be made based on an individualized assessment.

If TDHCA determines that any household member is currently engaged in, or has engaged in within the previous 12 months:

- *Violent criminal activity*, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR §5.100]. TDHCA further defines examples of violent criminal activity to include, but not be limited to, rape, murder, robbery, arson, aggravated assault, and home invasion.
- *Criminal activity* that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity. TDHCA considers such criminal activity to include, but not be limited to, crimes against property (burglary, etc.), social crimes (rioting, gang-recruitment, hate-crimes, child pornography, etc.), and risk-crimes (illegal gun possession, etc.).

TDHCA defines “currently engaged in” violent criminal activity and other criminal activity identified above as a record of conviction/adjudication where the earlier of the arrest and/or charge date is within the previous twelve (12) months, and the individual was found guilty, pled guilty or no contest; however, at its sole discretion, TDHCA may elect to review records of arrests and/or charges for violent criminal activity within the previous 12 months that have not been adjudicated, along with other credible evidence, to make a final determination on program eligibility in accordance with HUD guidelines.

- If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program within the previous 12 months.
- If the family engaged in or threatened abusive or violent behavior toward TDHCA personnel within the previous 12 months.
- TDHCA will also deny assistance to household members already receiving assistance from another program in accordance with Section 9.h. of Notice PIH 2021-15.

Prohibitions based on criminal activity for the eligible EHV populations regarding drug possession will be considered apart from criminal activity against persons (i.e., violent criminal activity). In compliance with PIH 2021-15, TDHCA **will not** deny an EHV applicant admission regardless of whether:

- Any member of the family has been evicted from federally assisted housing in the last five years;
- A PHA has ever terminated assistance under the program for any member of the family;
- The family currently owes rent or other amounts to TDHCA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act;

- The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease;
- The family breached an agreement with TDHCA to pay amounts owed to TDHCA, or amounts paid to an owner by a PHA or TDHCA;
- The family would otherwise be prohibited admission under alcohol abuse standards established by TDHCA in accordance with 24 CFR §982.553(a)(3);
- TDHCA determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission, drug-related criminal activity.

## **INCOME VERIFICATION AT ADMISSION**

Under the HCV program, PHAs must determine whether an applicant family's income exceeds the applicable income limit as established by HUD in the jurisdiction where the family wishes to lease a unit. While the verification hierarchy described in Notice PIH 2018-18 applies to income determinations for applicants, the Enterprise Income Verification (EIV) system generally is not available for verifying income of applicants.

The program regulations under 24 CFR §982.201(e) requires that TDHCA will receive information verifying that an applicant is eligible within the 60-day period before TDHCA issues a voucher to the applicant. For verification purposes, Notice PIH 2018-18 states that third-party generated documents be dated within 60 days of TDHCA's request.

For homeless families and other EHV eligible families, documentation may not be readily on-hand and may be difficult to obtain quickly. Accepting self-certifications and allowing for the delay of receipt of documentation and/or third-party verification will allow the CoC/partnering agency to assist the family in obtaining the necessary documentation without unduly delaying the family's housing assistance.

HUD is waiving the third-party income verification requirements for EHV applicants and, alternatively, allowing PHAs to consider self-certification as the highest form of income verification at admission. Applicants must submit an affidavit attesting to reported income, assets, expenses and other factors which would affect an income eligibility determination.

Applicants may provide third-party documentation which represents the applicant's income within the 60-day period prior to admission or voucher issuance but is not dated within 60 days of TDHCA's request. For example, a Supplemental Security Income (SSI) benefit letter that was issued in November 2020 to represent the applicant's benefit amount for 2021 and was provided to TDHCA in September 2021 would be an acceptable form of income verification. As a reminder, TDHCA may also use the SSI benefit letter as proof of disability.

Once HUD makes the EIV data available to PHAs under this waiver and alternative requirement, TDHCA will: review the EIV Income and Income Validation Tool (IVT) Reports to confirm/validate family-reported income within 90 days of the PIC-NG (see Section 15 of this notice below) submission date; print and maintain copies of the EIV Income and IVT Reports in the tenant file; and resolve any income discrepancy with the family within 60 days of the EIV Income or IVT Report dates.

The Department will accept family self-certifications made on the Household, Income, Assets, and Expenses Declaration form (TDHCA 1890) and the form must be signed by the family member whose information or status is being verified.

### *Eligibility Determination: Social Security Number and Citizenship Verification*

HCV applicants must disclose and document and PHAs must verify the social security numbers (SSN) of each applicant. HUD is consequently waiving the requirement to obtain and verify SSN documentation and documentation evidencing eligible noncitizen status before admitting the family to the EHV program, and PHAs may adopt policies to admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination.

Since, this documentation may not be readily on hand and may be difficult to obtain for individuals and families experiencing homelessness, the Department will accept self-certifications and delay the receipt of documentation and/or third-party verification to better assist EHV families more quickly and provide time for the family (with assistance from the CoC or other partnering agencies) to obtain the necessary documentation. However, such individuals must provide the required documentation within 180 days of admission to be eligible for continued assistance, pending verification, unless TDHCA provides an extension based on evidence from the family or confirmation from the CoC or other partnering agency that the family has made a good-faith effort to obtain the documentation. If a family member appeals secondary verification of immigration documents, PHAs are reminded that assistance may not be delayed, denied, reduced or terminated on the basis of immigration status pending the completion of the appeal as described in § 5.514(e).

Additionally, PHAs may accept self-certification of date of birth and disability status if a higher level of verification is not immediately available. If self-certification is used, TDHCA will obtain a higher level of verification within 90 days of admission or verify the information in EIV.

The Department will admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. These individuals are required to self-certify the information on the Household, Income, Assets, and Expense Declaration form (TDHCA 1890).

The Department will run EIV within 90-days of the new admission effective date. If the EIV Report indicates “verified” TDHCA will not require the family to provide the required documentation as outlined above.

If the EIV Report indicates “failed” and/or TDHCA receives a PIC Submission Error from HUD, TDHCA will require the family to provide the required documentation and work with the CoC or other partnering agency in order to verify the information and correct the case.

If the family does not comply with TDHCA’s requests for the required documentation, including any extensions and the CoC or other partnering agency, the Department will take steps to terminate assistance from the program in accordance with policies including offering a right to appeal.

If the Department determines that an ineligible family received assistance, TDHCA will take steps to terminate that family from the program in accordance with policies in chapter 12.

### **AGE AND DISABILITY VERIFICATION**

PHAs may accept self-certification of date of birth and disability status if a higher level of verification is not immediately available. If self-certification is used, TDHCA will obtain a higher level of verification within 90 days of admission or verify the information in EIV. If a PHA determines that an ineligible family received assistance, TDHCA will take steps to terminate that family from the program.

The Department will accept self-certification of date of birth if a higher form of verification is not immediately available. The information must be provided on the Household, Income, Asset, and Expense Declaration (TDHCA 1890) and the form must be signed by the family member whose date of birth is being

verified. In the case of a minor, the head of household's signature on the TDHCA 1890 will satisfy this requirement.

If self-certification is accepted, within 90 days of admission the Department will verify the information in EIV or through other third-party verification if the information is not available in EIV. TDHCA will note the family's file that self-certification was used as initial verification and include an EIV printout or other third-party verification confirming the applicant's date of birth.

The Department will not accept self-certification of disability status. If documentation cannot be obtained, the family is still eligible for the EHV, provided all other eligibility requirements have been met; however, the family will not receive the disability allowance until the disability status can be verified.

TDHCA determines that an ineligible family received assistance, TDHCA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

## **INCOME TARGETING**

TDHCA will determine income eligibility for EHV families in accordance with 24 §CFR 982.201 and PHA policy in Chapter 3; however, income targeting requirements do not apply for EHV families. TDHCA may still choose to include the admission of extremely low-income EHV families in its income targeting numbers for the fiscal year in which these families are admitted.

TDHCA will not include the admission of extremely low-income EHV families in its income targeting numbers for the fiscal year in which these families are admitted.

## **PART V: HOUSING SEARCH, LEASING, PORTABILITY AND PAYMENT STANDARDS**

### **HOUSING SEARCH AND LEASING**

#### *TPS-V.A. INITIAL VOUCHER TERM*

Unlike the standard HCV program, which requires an initial voucher term of at least 60 days, EHV vouchers must have an initial search term of at least 120 days. All EHV's will have an initial term of 120 calendar days. The family must submit a request for Tenancy Approval and proposed lease within the 120-day period unless TDHCA grants an extension.

#### *HOUSING SEARCH ASSISTANCE*

TDHCA will ensure housing search assistance is made available to EHV families during their initial housing search. The housing search assistance will be provided by TDHCA and through the CoC or other partnering agency or entity. As identified in the MOU, the following housing search assistance will be provided to each EHV family:

TDHCA staff will:

- Assist in conducting owner outreach to ensure rental units are available for individuals and families. This includes contacting current owners to inquire about availability of current units.
- Help families identify potentially available units during their housing search, including physically accessible units with features for family members with disabilities, as well as units in low-poverty neighborhoods.

- Provide directions to potential units as part of the EHV briefing packet Expedite the EHV leasing process for the family to the extent practicable and in accordance with policies in this chapter.
- Conduct proactive check-ins via email and telephone with families who are searching with an EHV and remind them of their voucher expiration date.

The CoC or Service Provider will:

- Conduct owner outreach and recruitment to assist household during their initial housing search.
- Help the family identify and visit potentially available units during their housing search
- Helping the family to find a unit that meets the Household’s disability-related needs.
- Providing transportation and directions
- Assisting with the completion of rental applications and PHA forms
- Helping to expedite the EHV leasing process for the Household.

### **HQS PRE-INSPECTIONS**

To expedite the leasing process, TDHCA, the COC or other provider may pre-inspect available units that EHV families may be interested in leasing to maintain a pool of eligible units. If an EHV family selects a unit that passed a HQS pre-inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval, the unit may be approved provided that it meets all other conditions under 24 CFR §982.305. The family will be free to select his or her unit. When a pre-inspected unit is not selected, TDHCA will make every effort to fast-track the inspection process, including adjusting the normal inspection schedule for any required re-inspections.

### **INITIAL LEASE TERM**

Unlike in the standard the HCV program, EHV voucher holders may enter into an initial lease that is for less than 12 months, regardless of TDHCA policy in Section 9-I.E., Term of Assisted Tenancy. TDHCA will allow the initial lease term to be less than 12-months if it is the only option for the family to obtain housing..

### **PORTABILITY**

The normal HCV portability procedures and requirements outlined in Chapter 10 generally apply to EHV. Exceptions are addressed below.

#### *Nonresident Applicants*

Under EHV, applicant families may move under portability even if the family did not have legal residency in the jurisdiction of the initial PHA when they applied, regardless of PHA policy in Section 10-II.B.

### *Billing and Absorption*

A receiving PHA cannot refuse to assist an incoming EHV family, regardless of whether TDHCA administers EHV under its own ACC.

- If the EHV family moves under portability to another PHA that administers EHV under its own ACC, the receiving PHA may only absorb the incoming EHV family with an EHV (assuming it has an EHV voucher available to do so).
- If TDHCA does not have an EHV available to absorb the family, it must bill the initial PHA. The receiving PHA must allow the family to lease the unit with EHV assistance and may not absorb the family with a regular HCV when the family leases the unit. Regardless of whether the receiving PHA absorbs or bills the initial PHA for the family's EHV assistance, the EHV administration of the voucher is in accordance with the receiving PHA's EHV policies.
- If the EHV family moves under portability to another PHA that does not administer EHV under its own ACC, the receiving PHA may absorb the family into its regular HCV program or may bill the initial PHA.

### *Family Briefing*

In addition to the applicable family briefing requirements at 24 CFR §982.301(a)(2) as to how portability works and how portability may affect the family's assistance as reflected in TDHCA's policies on briefings in Chapter 5, TDHCA will include a written notice that TDHCA will assist the family with moves under portability, inform the family how portability may impact the special EHV services and assistance that may be available to the family, and help facilitate the family's portability move to the receiving PHA. For limited English proficient (LEP) applicants, TDHCA will provide interpretation services in accordance with TDHCA's LEP plan (See Chapter 2).

### *Coordination of Services*

If the portability move is in connection with the EHV family's initial lease-up, when TDHCA contacts the receiving PHA in accordance with Section 10-II.B. Preapproval Contact with Receiving PHA, TDHCA will consult and coordinate with the receiving PHA to ensure there is no duplication of EHV services and assistance, and ensure the receiving PHA is aware of the maximum amount of services fee funding that TDHCA may provide to the receiving PHA on behalf of the family.

### *Services Fee*

Standard portability billing arrangements apply for HAP and ongoing administrative fees for EHV families. For service fees funding, the amount of the service fee provided by the initial PHA may not exceed the lesser of the actual cost of the services and assistance provided to the family by the receiving PHA or \$1,750, unless the initial PHA and receiving PHA mutually agree to change the \$1,750 cap. Service fees will be paid as follows:

- If the receiving PHA, in consultation and coordination with the initial PHA, will provide eligible services or assistance to the incoming EHV family, the receiving PHA may be compensated for those costs by the initial PHA, regardless of whether the receiving PHA bills or absorbs.
- If the receiving PHA administers EHV, the receiving PHA may use its own services fee and may be reimbursed by the initial PHA, or the initial PHA may provide the services funding upfront to the receiving PHA for those fees and assistance.
- If the receiving PHA does not administer EHV, the initial PHA must provide the services funding upfront to the receiving PHA. Any amounts provided to the receiving PHA that are not used for services or

assistance on behalf of the EHV family must promptly be returned by the receiving PHA to the initial PHA.

#### *Placement Fee/Issuance Reporting Fee*

If the portability lease-up qualifies for the placement fee/issuance reporting fee, the receiving PHA receives the full amount of the placement component of the placement fee/issuance reporting fee. The receiving PHA is eligible for the placement fee regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program at initial lease-up. The initial PHA qualifies for the issuance reporting component of the placement fee/issuance reporting fee, as applicable.

### **PAYMENT STANDARDS**

#### *Payment Standard Schedule*

For the EHV program, HUD has waived the regulation requiring a single payment standard for each unit size. Instead, TDHCA may, but is not required to, establish separate higher payment standards for EHV. Lower EHV payment standards are not permitted. If TDHCA is increasing the regular HCV payment standard, TDHCA will also increase the EHV payment standard if it would be otherwise lower than the new regular HCV payment standard. The separate EHV payment standard must comply with all other HCV requirements with the exception of the alternative requirements discussed below. Further, if TDHCA chooses to establish higher payments standards for EHV, HUD has provided other regulatory waivers:

- Defining the “basic range” for payment standards as between 90 and 120 percent of the published Fair Market Rent (FMR) for the unit size (rather than 90 to 110 percent).
- Allowing a PHA that is not in a designated Small Area FMR (SAFMR) area or has not opted to voluntarily implement SAFMRs to establish exception payment standards for a ZIP code area above the basic range for the metropolitan FMR based on the HUD published SAFMRs. TDHCA may establish an exception payment standard up to 120% (as opposed to 110%) of the HUD published Small Area FMR for that ZIP code area. The exception payment standard must apply to the entire ZIP code area.

TDHCA will establish a higher payment standard amount for EHV at 120% of the Small Area Fair Market Rent.

#### *Rent Reasonableness*

All rent reasonableness requirements apply to EHV units, regardless of whether TDHCA has established an alternative or exception EHV payment standard.

## **PART VI: USE OF FUNDS, REPORTING, AND FINANCIAL RECORDS**

EHV funds allocated to TDHCA for HAP (both funding for the initial allocation and HAP renewal funding) may only be used for eligible EHV HAP purposes. EHV HAP funding obligated to TDHCA may not be used for EHV administrative expenses or the other EHV eligible expenses under this notice. Likewise, EHV administrative fees and funding obligated to TDHCA are to be used for those purposes and must not be used for HAP.

The appropriated funds for EHV are separate from the regular HCV program and may not be used for the regular HCV program but may only be expended for EHV eligible purposes. EHV HAP funds may not roll into the regular HCV restricted net position (RNP) and must be tracked and accounted for separately

as EHV RNP. EHV administrative fees and funding for other eligible expenses permitted by Notice PIH 2021-15 may only be used in support of the EHV and cannot be used for regular HCVs. EHV funding may not be used for the repayment of debts or any amounts owed to HUD by HUD program participants including, but not limited to, those resulting from Office of Inspector General (OIG), Quality Assurance Division (QAD), or other monitoring review findings.

TDHCA will comply with EHV reporting requirements in the Voucher Management System (VMS) and Financial Data Schedule (FDS) as outlined in Notice PIH 2021-15. TDHCA will maintain complete and accurate accounts and other records for the program and provide HUD and the Comptroller General of the United States full and free access to all accounts and records that are pertinent the administration of the EHV in accordance with the HCV program requirements at 24 CFR §982.158.

## PART VII: CARES ACT COVID-19 WAIVERS FOR EHV

The following charts summarize the waivers authorized under **PIH Notice 2021-15** (Notice) and the availability period for each. On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (P.L.117-2, hereafter referred to in this notice as “the ARP”) into law, which provides over \$1.9 trillion in relief to address the continued impact of the -COVID-19 pandemic on the economy, public health, State and local governments, individuals, and businesses.

Some of the waivers listed below are used only as needed. PHA staff will continue to evaluate the need to adopt other available waivers. TDHCA has adopted the waivers of policies and procedures listed below during the COVID-19 pandemic, for the following reasons:

- To continue providing safe, affordable, quality housing to the participants in the Housing Choice Voucher program; and
- To protect the health and safety of the participants, PHA staff, service providers, and the community, to the greatest extent feasible.

To provide the written documentation required by HUD of the waivers used by TDHCA, the last two columns have been completed reflecting TDHCA’s use of the possible waivers for EHV.

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
<b>HQS-1 Initial inspection</b>	<u>Statutory Authority</u> Section 8(o)(8)(A)(i), Section 8(o)(8)(C)  <u>Regulatory Authority</u>	<ul style="list-style-type: none"> <li>• Changes initial inspection requirements, allowing for owner certification that there are no life-threatening deficiencies</li> <li>• Where self-certification was used, PHA must</li> </ul>	<ul style="list-style-type: none"> <li>• 7/31/20</li> <li>• 10/31/20</li> <li>• HUD revised for EHV 6/30/22</li> </ul>	<b>Yes</b>	8/1/2021

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
	§ 982.305(a), 982.305(b), 982.405	inspect the unit no later than June 30, 2022.		1-year anniversary of the date of the owner's certification.	
<b>HQS-3</b> <b>Non-Life Threatening HQS - Initial Unit Approval</b>	<u>Statutory Authority</u>  Section 8(o)(8)(A)(ii)  <u>Regulatory Authority</u>  HOTMA HCV Federal Register Notice January 18, 2017	<ul style="list-style-type: none"> <li>Allows for extension of up to 30 days for owner repairs of non-life threatening conditions</li> </ul>	<ul style="list-style-type: none"> <li>7/31/20</li> <li>10/31/20</li> <li>HUD revised for EHV 12/31/21</li> </ul>	<b>Yes</b>  The extension making the NLT repairs may extend beyond December 31, 2020, depends on the date TDHCA approved the extension. (30-Days additional)	8/1/2021
<b>HQS-4</b> <b>Initial HQS - Alternative Inspections</b>	<u>Statutory Authority</u>  Section 8(o)(8)(A)(iii)  <u>Regulatory Authority</u>  HOTMA HCV Federal Register Notice January 18, 2017	<ul style="list-style-type: none"> <li>Under Initial HQS Alternative Inspection Option - allows for commencement of assistance payments based on owner certification there are no life-threatening deficiencies</li> <li>Where self-certification was used, PHA must inspect the unit no later than June 30, 2022.</li> </ul>	<ul style="list-style-type: none"> <li>7/31/20</li> <li>10/31/20</li> <li>HUD revised for EHV 6/30/22</li> </ul>	<b>Yes</b>  1-year anniversary of the date of the owner's certification.	8/1/2021

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
<b>HQS-6 Interim Inspections</b>	<u>Statutory Authority</u> Section 8(o)(8)(F)  <u>Regulatory Authority</u> §§ 982.405(g), § 983.103(e)	<ul style="list-style-type: none"> <li>• Waives the requirement for TDHCA to conduct interim inspection and requires alternative method</li> <li>• Allows for repairs to be verified by alternative methods</li> </ul>	<ul style="list-style-type: none"> <li>• 7/31/20</li> <li>• HUD revised 12/31/21</li> <li>•</li> </ul>	<b>Yes</b>  HQS inspection in accordance with the applicable time periods upon notification by a family or government official that the assisted unit does not comply with the HQS.	8/1/2021
<b>HQS-9 HQS QC Inspections</b>	<u>Regulatory Authority</u> § 982.405(b)	<ul style="list-style-type: none"> <li>• Provides for a suspension of the requirement for QC sampling inspections</li> </ul>	<ul style="list-style-type: none"> <li>• 10/31/20</li> <li>• 12/31/21</li> <li>•</li> </ul>	<b>Yes</b>	8/1/2021
<b>HCV-6 Automatic Termination of the HAP Contract</b>	<u>Regulatory Authority</u> § 982.455	<ul style="list-style-type: none"> <li>• Allows PHA to extend the period of time after the last HAP payment is made before the HAP contract terminates automatically.</li> </ul>	<ul style="list-style-type: none"> <li>• 12/31/21</li> <li>•</li> </ul>	<b>Yes</b>  No changes revised	8/1/2021
<b>Memorandum of Understanding (MOU) with the CoC- Establishing a partnership for the administering the EHV's.</b>	PIH 2021-15 (HA) page - 23	<ul style="list-style-type: none"> <li>• Allows the CoC to make direct referrals of EHV qualifying individuals and families to TDHCA.</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>	<b>Yes-</b> mandatory	8/1/2021
<b>Admissions process - Direct referrals from</b>	HUD is waiving § 982.204(a)	<ul style="list-style-type: none"> <li>• PHAs must accept referrals for EHV's</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>	<b>Yes-</b> mandatory	8/1/2021

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
<b>the CoC and other partnering organizations</b>	PIH 2021-15 (HA) page - 24	directly from the CE System			
<b>Required housing search assistance</b>	PIH 2021-15 (HA) page -27	<ul style="list-style-type: none"> <li>To help EHV participants successfully move to areas of higher opportunity, as well as broaden the pool of landlords participating in the EHV program, including culturally or racially diverse landlords and landlords with smaller numbers of units.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> mandatory	8/1/2021
<b>Separate waiting list for EHV's</b>	<p>HUD is waiving § 982.204(f)</p> <p>PIH 2021-15 (HA) page -27</p>	<ul style="list-style-type: none"> <li>PHA shall maintain a separate waiting list for EHV referrals/applicants to help expedite the leasing process, both at initial leasing and for any turnover vouchers that may be issued prior to the September 30, 2023 turnover voucher cut-off date.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> mandatory	8/1/2021
<b>Public notice of Waiting List opening</b>	<p>HUD is waiving § 982.206</p> <p>PIH 2021-15 (HA) page -27</p>	<ul style="list-style-type: none"> <li>Requires TDHCA to give public notice when opening and closing the waiting list. Under this alternative requirement, TDHCA will work directly with its CoC and other referral agency partners to manage the number</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> mandatory	8/1/2021

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
		of referrals and the size of the EHV waiting list.			
<b>Local Preferences</b>	HUD is waiving § 982.207(a)  PIH 2021-15 (HA) page -28	<ul style="list-style-type: none"> <li>PHA may have an existing set of local preferences for its HCV program that understandably does not align with the specific targeted purpose of the EHV</li> </ul>		<b>No-</b> Optional	8/1/2021
<b>Residency preference</b>	HUD is waiving § 982.207(a)  PIH 2021-15 (HA) page -28	<ul style="list-style-type: none"> <li>PHAs to establish Alternative requirement under which a PHA may not apply any residency preference to EHV applicants.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>NO-</b> optional	8/1/2021
<b>Restrictions on PHA denial of assistance to an EHV applicant</b>	HUD is waiving § 982.207(b)  PIH 2021-15 (HA) page -28	<ul style="list-style-type: none"> <li>Allows PHAs to establish an alternative requirement with respect to mandatory and permissive prohibitions of admissions for EHV applicants.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> mandatory	8/1/2021
<b>Restrictions on PHA denial of assistance to an EHV applicant- Mandatory</b>	HUD is waiving §982.552 and § 982.553  PIH 2021-15 (HA) page -28	<ul style="list-style-type: none"> <li>Allows PHAs to establish an alternative requirement with respect to mandatory and permissive prohibitions of admissions for EHV applicants.</li> </ul> <p>Must apply the standards it established under §</p>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> mandatory	8/1/2021

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
		<p>982.553(a)(1)(ii)(C) that prohibit admission if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing; And</p> <p>(2) must apply the standards it established under § 982.553(a)(2)(i) that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program to EHV applicants.</p>			
<p><b>Restrictions on PHA denial of assistance to an EHV applicant- Permissive Prohibitions</b></p>	<p>HUD is waiving §982.552 and § 982.553</p> <p>PIH 2021-15 (HA) page -29</p>	<ul style="list-style-type: none"> <li>• If any member of the family has been evicted from federally assisted housing in the last five years.</li> <li>• If a PHA has ever terminated assistance under the program for any member of the family.</li> <li>• If any member of the family has committed fraud, bribery, or any other corrupt or</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>	<p><b>Yes-</b> mandatory</p>	<p>8/1/2021</p>

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
		<p>criminal act in connection with any Federal housing program.</p> <ul style="list-style-type: none"> <li>• If the family currently owes rent or other amounts to TDHCA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.</li> <li>• If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.</li> <li>• If the family breached an agreement with TDHCA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA.</li> <li>• If the family engaged in or threatened abusive or violent behavior toward PHA personnel.</li> <li>• If the family has been engaged in</li> </ul>			

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
		criminal activity or alcohol abuse as described in § <ul style="list-style-type: none"> <li>982.553.</li> </ul>			
<b>Income Verification at Admissions</b>	HUD is waiving § 982.201(e) PIH 2021-15 (HA) page - 32	Allows PHAs to consider self-certification as the highest form of income verification at admission.	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> mandatory	8/1/2021
<b>Eligibility Determination: Social Security Number and Citizenship Verification</b>	24 CFR § 5.403 PIH 2021-15 (HA) page - 33	<ul style="list-style-type: none"> <li>PHAs must verify the social security numbers (SSN) of each applicant. U.S. citizenship or eligible immigration status for noncitizens claiming eligibility for assistance. Accepting self-certifications and delaying the receipt of documentation and/or third-party verification will allow PHAs to assist EHV families more quickly and provide time for the family (with assistance from the CoC or other partnering agencies) to obtain the necessary documentation.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> optional	8/1/2021
<b>Inapplicability of Income Targeting Requirements</b>	HUD is waiving § 982.201(b)(2) PIH 2021-15 (HA) page - 34	<ul style="list-style-type: none"> <li>Allows PHAs to waive income targeting requirements</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> mandatory	8/1/2021
<b>Use of recently conducted initial income</b>	24 CFR § 982.516	<ul style="list-style-type: none"> <li>Allows PHAs may accept income calculations and</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	I think this should be 6/30/2022	8/1/2021

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
<b>determinations and verifications at admission</b>	PIH 2021-15 (HA) page - 34	verifications from third-party providers or from an examination that TDHCA conducted on behalf of the family for another subsidized housing program in lieu of conducting an initial examination of income as long as the income was (1) calculated in accordance with rules outlined at 24 CFR Part 5 and within the last six months and (2) the family certifies there has been no change in income or family composition in the interim.		- Yes	
<b>Pre-inspection of HQS units</b>	PIH 2021-15 (HA) page - 35	<ul style="list-style-type: none"> <li>Allows PHAs to pre-inspect available units that EHV families may be interested in leasing in order to maintain a pool of eligible units within 45 days of the date of the Request for Tenancy Approval (form HUD-52517)</li> </ul>	•	<b>Yes-</b> optional	8/1/2021
<b>Initial Search Term</b>	HUD is waiving § 982.303(a) PIH 2021-15 (HA) page - 35	<ul style="list-style-type: none"> <li>Allows PHAs to establish an</li> <li>alternative requirement that the initial term for an EHV must be at least 120 days</li> </ul>	•	<b>Yes-</b> mandatory	8/1/2021

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
<b>Initial lease term</b>	HUD is waiving Section 8(o)(7)(A) of the United States Housing Act of 1937 and § 982.309(a)(2)(ii) PIH 2021-15 (HA) page - 36	<ul style="list-style-type: none"> <li>PHAs to allow initial lease term for an EHV family may be less than 12 months regardless of whether the shorter term is a prevailing market practice.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> mandatory	8/1/2021
<b>Portability</b>	HUD is waiving section 8(r)(1)(B)(i) of the United States Housing Act of 1937 and § 982.353(c) PIH 2021-15 (HA) page - 36	<ul style="list-style-type: none"> <li>PHA may not restrict an EHV family from exercising portability because they are a non-resident applicant.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> mandatory	8/1/2021
<b>Portability billing and absorption</b>	PIH 2021-15 (HA) page - 36	<ul style="list-style-type: none"> <li>Receiving PHA cannot refuse to assist an incoming EHV family, regardless of</li> <li>whether TDHCA does or does not currently administer EHV's under its own ACC.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> mandatory	8/1/2021
<b>Family briefing/initial PHA and receiving PHA coordination on services</b>	PIH 2021-15 (HA) page - 36	<ul style="list-style-type: none"> <li>The initial PHA must inform the family how portability may impact the special EHV services and assistance that may be available to the family.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> mandatory	8/1/2021
<b>Payment standard amounts</b>	HUD is waiving § 982.503(a)(3) PIH 2021-15 (HA) page - 38	<ul style="list-style-type: none"> <li>Allows PHAs to establish an alternative requirement for a separate higher payment standards for</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<b>Yes-</b> optional	8/1/2021

Item	Statutory and regulatory waivers	Summary of alternative requirements	Availability Period Ends	Did PHA implement waiver and alternative requirement?	Date of PHA adoption
		<p>the EHV in order to increase the potential pool of available units for EHV families.</p> <p>The separate EHV payment standard must comply with all other HCV requirements under § 983.503 with the exception of the waivers of § 982.503(b)(i) and § 982.503(b)(iii).</p>			
<p><b>Increase in Payment Standard During HAP Contract Term</b></p>	<p>HUD is waiving 24 CFR § 82.505(c)(4) PIH 2021-15 (HA) page – 39-40</p>	<ul style="list-style-type: none"> <li>Allows PHAs to establish an alternative requirement to establish a policy in TDHCA administrative plan on when to apply the increased payment standard (e.g., interim reexamination, owner rent increase) after the effective date of the increase in the payment standard amount, provided the increased payment standard is used to calculate the HAP no later than the effective date of the family’s first regular reexamination following the change.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<p><b>Yes-</b> optional</p>	<p>8/1/2021</p>

# GLOSSARY

## **A. ACRONYMS USED IN SUBSIDIZED HOUSING**

<b>AAF</b>	Annual Adjustment Factor. A factor published by HUD in the Federal Register which is used to compute annual rent adjustment.
<b>ACC</b>	Annual Contributions Contract
<b>BR</b>	Bedroom
<b>CDBG</b>	Community Development Block Grant
<b>CFR</b>	Code of Federal Regulations. Commonly referred to as "the regulations". The CFR is the compilation of Federal rules which are first published in the Federal Register and define and implement a statute.
<b>ELI</b>	Extremely low income
<b>FHA</b>	Federal Housing Administration
<b>FMR</b>	Fair Market Rent
<b>FY</b>	Fiscal Year
<b>FYE</b>	Fiscal Year End
<b>GAO</b>	Government Accounting Office
<b>GFC</b>	Gross Family Contribution. Note: Has been replaced by the term Total Tenant Payment (TTP).
<b>GR</b>	Gross Rent
<b>HAP</b>	Housing Assistance Payment
<b>HCV</b>	Housing Choice Voucher
<b>HQS</b>	Housing Quality Standards
<b>HUD</b>	The Department of Housing and Urban Development or its designee.
<b>HURRA</b>	Housing and Urban/Rural Recovery Act of 1983; resulted in most of the 1984 HUD regulation changes to definition of income, allowances, rent calculations
<b>IG</b>	Inspector General
<b>IGR</b>	Independent Group Residence
<b>IPA</b>	Independent Public Accountant
<b>IRA</b>	Individual Retirement Account
<b>MSA</b>	Metropolitan Statistical Area established by the U.S. Census Bureau
<b>PHA</b>	Public Housing Agency
<b>PMSA</b>	A Primary Metropolitan Statistical Area established by the U.S. Census Bureau
<b>PS</b>	Payment Standard
<b>QC</b>	Quality Control
<b>RC</b>	Regional Coordinator

<b>RFAT</b>	Request for Approval of Tenancy
<b>RFP</b>	Request for Proposals
<b>RRP</b>	Rental Rehabilitation Program
<b>RTA</b>	Request for Tenancy Approval
<b>SRO</b>	Single Room Occupancy
<b>SSMA</b>	Standard Statistical Metropolitan Area. Has been replaced by MSA, Metropolitan Statistical Area.
<b>TDHCA</b>	Texas Department of Housing and Community Affairs
<b>TR</b>	Tenant Rent
<b>TTP</b>	Total Tenant Payment
<b>UA</b>	Utility Allowance
<b>URP</b>	Utility Reimbursement Payment

## **B. GLOSSARY OF TERMS IN SUBSIDIZED HOUSING**

**1937 ACT.** The United States Housing Act of 1937 (42 U.S.C. §1437 et seq.)

**ADMINISTRATIVE PLAN.** The HUD required written policy of TDHCA governing its administration of the Section 8 tenant-based programs. The Administrative Plan and any revisions must be approved by TDHCA's board and a copy submitted to HUD as a supporting document to TDHCA Plan.

**ABSORPTION.** In portability, the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

**ACC RESERVE ACCOUNT (FORMERLY "PROJECT RESERVE").** Account established by HUD from amounts by which the maximum payment to TDHCA under the consolidated ACC (during a PHA fiscal year) exceeds the amount actually approved and paid. This account is used as the source of additional payments for the program.

**ADA.** Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)

**ADJUSTED INCOME.** Annual income, less allowable HUD deductions.

**ADMINISTRATIVE FEE.** Fee paid by HUD to TDHCA for administration of the program.

**ADMINISTRATIVE FEE RESERVE (Formerly "Operating reserve").** Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes.

**ADMISSION.** The effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program. This is the point when the family becomes a participant in the program.

**ANNUAL BUDGET AUTHORITY.** The maximum annual payment by HUD to a PHA for a funding increment.

**ANNUAL CONTRIBUTIONS CONTRACT (ACC).** A written contract between HUD and a PHA. Under the contract HUD agrees to provide funding for operation of the program, and TDHCA agrees to comply with HUD requirements for the program

**ANNUAL INCOME.** The anticipated total Annual Income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

**ANNUAL INCOME AFTER ALLOWANCES.** The Annual Income (described above) less the HUD-approved allowances.

**APPLICANT.** (or applicant family). A family that has applied for admission to a program, but is not yet a participant in the program.

**"AS-PAID" STATES.** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

**ASSETS.** (See Net Family Assets.)

**ASSISTED TENANT.** A tenant who pays less than the market rent as defined in the regulations. Includes tenants receiving rent supplement, Rental Assistance Payments, or Section 8 assistance and all other 236 and 221 (d)(3) BMIR tenants, except those paying the 236 market rent or 120% of the BMIR rent, respectively.

**BIFURCATE.** To divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain in tact.

**BUDGET AUTHORITY.** An amount authorized and appropriated by the Congress for payment to PHAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to TDHCA over the ACC term of the funding increment.

**CERTIFICATE.** A Certificate issued by TDHCA under the Section 8 pre-merger certificate program, declaring a family to be eligible for participation in this program and stating the terms and conditions for such participation. Will no longer be issued after October 1, 1999.

**CERTIFICATE PROGRAM.** Pre-merger rental certificate program.

**CHILD CARE EXPENSES.** Amounts paid by the family for the care of minors under 13 years of age where such care is necessary to enable a family member to be employed or for a household member to further his/her education.

**CO-HEAD.** An individual in the household who is equally responsible for the lease with the Head of Household. (A family never has a Co-head and a Spouse and; a Co-head is never a Dependent).

**COMMON SPACE.** In shared housing: Space available for use by the assisted family and other occupants of the unit.

**CONGREGATE HOUSING.** Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing.

**CONSOLIDATED ANNUAL CONTRIBUTIONS CONTRACT.** (Consolidated ACC). See 24 CFR 982.151.

**CONTIGUOUS MSA.** In portability, an MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

**CONTINUOUSLY ASSISTED.** An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

**CONTRACT.** (See Housing Assistance Payments Contract.)

**COOPERATIVE.** (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type: See 24 CFR 982.619.

**COVERED FAMILIES.** Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

**DATING VIOLENCE.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

**DEPARTMENT.** Also referred to as the Texas Department of Housing and Community Affairs.

**DEPENDENT.** A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or is a full-time student 18 years of age or over.

**DISABILITY ASSISTANCE EXPENSE.** Anticipated costs for care attendants and auxiliary apparatus for disabled family members which enable a family member (including the disabled family member) to work.

**DISABLED FAMILY.** A family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

**DISABLED PERSON.** See Person with Disabilities.

**DISPLACED PERSON/FAMILY.** A person or family displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under federal disaster relief laws.

**DOMESTIC VIOLENCE.** Includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**DOMICILE.** The legal residence of the household head or spouse as determined in accordance with State and local law.

**DRUG-RELATED CRIMINAL ACTIVITY.** The illegal manufacture, sale, distribution, use, or the possession with intent to manufacture, sell distribute or use, of a controlled substance (as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802)).

**DRUG TRAFFICKING.** The illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

**ECONOMIC SELF-SUFFICIENCY PROGRAM.** Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). Also see 24 CFR 5.603 (c).

**ELDERLY FAMILY.** A family whose head, spouse, or sole member is a person who is at least 62 years of age; or two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

**ELDERLY HOUSEHOLD.** A family whose head or spouse or whose sole member is at least 62 years of age; may include two or more elderly persons living together or one or more such persons living with another person who is determined to be essential to his/her care and wellbeing.

**ELDERLY PERSON.** A person who is at least 62 years old.

**ELIGIBILITY INCOME.** May 10, 1984, regulations deleted Eligibility Income, per se, because Annual Income is now for eligibility determination to compare to income limits.

**ELIGIBLE FAMILY (Family).** A family is defined by TDHCA in the administrative Plan, which is approved by HUD.

**EXCEPTIONAL MEDICAL OR OTHER EXPENSES.** Prior to the regulation change in 1982, this meant medical and/or unusual expenses as defined in Part 889 which exceeded 25% of the Annual Income. It is no longer used.

**EXCEPTION RENT.** In the pre-merger certificate program, an initial rent (contract rent plus any utility allowance) in excess of the published FMR. See FMR/Exception rent.

**EXCESS MEDICAL EXPENSES.** Any medical expenses incurred by elderly or disabled families only in excess of 3% of Annual Income which are not reimbursable from any other source.

**EXTREMELY LOW-INCOME FAMILY.** A family whose incomes do not exceed the higher of the federal poverty level or 30% of the area median income, as determined by HUD, with adjustments for smaller and larger families.

**FAIR HOUSING ACT.** Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 et seq.)

**FAIR MARKET RENT (FMR).** The rent including the cost of utilities (except telephone) that would be required to be paid in the housing market area to obtain privately owned existing decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. Fair market rents for existing housing are established by HUD for housing units of varying sizes (number of bedrooms) and are published in the *Federal Register*.

**FAMILY.** (Also see Participant and Tenant) "Family" includes but is not limited to:

A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);

An elderly family;

A near-elderly family;

A displaced family

The remaining member of a tenant family; and

A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family. (Family can be further defined by TDHCA).

**FAMILY OF VETERAN OR SERVICE PERSON.** A family is a "family of veteran or service person" when:

The veteran or service person (a) is either the head of household or is related to the head of the household; or (b) is deceased and was related to the head of the household, and was a family member at the time of death.

The veteran or service person, unless deceased, is living with the family or is only temporarily absent unless s/he was (a) formerly the head of the household and is permanently absent because of hospitalization, separation, or desertion, or is divorced; provided, the family contains one or more persons for whose support s/he is legally responsible and the spouse has not remarried; or (b) not the head of the household but is permanently hospitalized; provided, that s/he was a family member at the time of hospitalization and there remain in the family at least two related persons.

**FAMILY RENT TO OWNER.** In the voucher program, the portion of the rent to owner paid by the family.

**FAMILY SELF-SUFFICIENCY PROGRAM (FSS PROGRAM).** The program established by a PHA to promote self-sufficiency of assisted families, including the provision of supportive services.

**FAMILY SHARE.** The amount calculated by subtracting the housing assistance payment from the gross rent.

**FAMILY UNIT SIZE.** The appropriate number of bedrooms for a family, as determined by TDHCA under TDHCA's subsidy standards.

**FMR/EXCEPTION RENT.** The fair market rent published by HUD headquarters. In the pre-merger certificate program the initial contract rent for a dwelling unit plus any utility allowance could not exceed the FMR/exception rent limit (for the dwelling unit or for the family unit size). In the voucher

program TDHCA adopts a payment standard schedule that is within 90% to 110% of the FMR for each bedroom size for the HCV program. For the EHV program, we are establishing a payment standard at 120% of the Fair Market Rent.

**FOSTER CHILD CARE PAYMENT.** Payment to eligible households by state, local, or private agencies appointed by the State, to administer payments for the care of foster children.

**FULL-TIME STUDENT.** A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended).

**FUNDING INCREMENT.** Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for TDHCA program.

**GROSS FAMILY CONTRIBUTION.** Changed to Total Tenant Payment.

**GROSS RENT.** The sum of the Rent to Owner and the utility allowance. If there is no utility allowance, Rent to Owner equals Gross Rent.

**GROUP HOME.** A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide).

**HAP CONTRACT.** (See Housing Assistance Payments contract.)

**HEAD OF HOUSEHOLD.** The head of household is the person who assumes legal and financial responsibility for the household and is listed on the application as head.

**HOUSING AGENCY.** A state, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. (PHA and HA mean the same thing.)

**HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.** Act in which the U.S. Housing Act of 1937 (sometimes referred to as the Act) was recodified, and which added the Section 8 Programs.

**HOUSING ASSISTANCE PAYMENT.** The monthly assistance payment by a PHA. The total assistance payment consists of:

A payment to the owner for rent to owner under the family's lease. An additional payment to the family if the total assistance payment exceeds the rent to owner. The additional payment is called a "utility reimbursement" payment.

**HOUSING ASSISTANCE PAYMENTS CONTRACT.** (HAP contract). A written contract between a PHA and an owner in the form prescribed by HUD headquarters, in which TDHCA agrees to make housing assistance payments to the owner on behalf of an eligible family.

**HOUSING ASSISTANCE PLAN.** (1) A Housing Assistance Plan submitted by a local government participating in the Community Development Block Program as part of the block grant application, in accordance with the requirements of 570.303(c) submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD. (2) A Housing Assistance Plan meeting the

requirements of 570.303(c) submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD.

**HOUSING CHOICE VOUCHER PROGRAM (HCV).** (See Section 8)

**HOUSING QUALITY STANDARDS (HQS).** The HUD minimum quality standards for housing assisted under the tenant-based programs.

**HUD.** The Department of Housing and Urban Development.

**HUD REQUIREMENTS.** HUD requirements for the Section 8 programs. HUD requirements are issued by HUD headquarters as regulations. Federal Register notices or other binding program directives.

**IMMEDIATE FAMILY MEMBER.** A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or any other person living in the household of that person and related to that person by blood or marriage.

**IMPUTED ASSET.** Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

**IMPUTED INCOME.** HUD passbook rate x total cash value of assets. Calculation used when assets exceed \$5,000.

**IMPUTED WELFARE INCOME.** An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family's annual income and therefore reflected in the family's rental contribution.

**INCOME.** Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

**INCOME FOR ELIGIBILITY.** Annual Income.

**INDIAN.** Any person recognized as an Indian or Alaska native by an Indian tribe, the federal government, or any State. **INDIAN HOUSING AUTHORITY (IHA).** A housing agency established either by exercise of the power of self-government of an Indian Tribe, independent of State law, or by operation of State law providing specifically for housing authorities for Indians.

**INITIAL PHA.** In portability, the term refers to both:

A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and

A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

**INITIAL PAYMENT STANDARD.** The payment standard at the beginning of the HAP contract term.

**INITIAL RENT TO OWNER.** The rent to owner at the beginning of the HAP contract term.

**INTEREST REDUCTION SUBSIDIES.** The monthly payments or discounts made by HUD to reduce the debt service payments and, hence, rents required on Section 236 and 221 (d)(3) BMIR projects. Includes

monthly interest reduction payments made to mortgagees of Section 236 projects and front-end loan discounts paid on BMIR projects.

**JURISDICTION.** The area in which TDHCA has authority under State and local law to administer the program.

**LANDLORD.** This term means either the owner of the property or his/her representative or the managing agent or his/her representative, as shall be designated by the owner.

**LARGE VERY LOW INCOME FAMILY.** Prior to the 1982 regulations, this meant a very low income family which included six or more minors. This term is no longer used.

**LEASE.** A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and TDHCA. In cooperative housing, a written agreement between a cooperative and a member of the cooperative. The agreement establishes the conditions for occupancy of the member's family with housing assistance payments to the cooperative under a HAP contract between the cooperative and TDHCA.

**LEASE ADDENDUM.** For pre-merger Certificate, pre-merger OFTO, and pre-merger Voucher tenancies, the lease language required by HUD in the lease between the tenant and the owner.

**LIVE-IN AIDE.** A person who resides with an elderly person or disabled person and who is determined to be essential to the care and well-being of the person, is not obligated for the support of the person, and would not be living in the unit except to provide necessary supportive services.

**LOCAL PREFERENCE.** A preference used by TDHCA to select among applicant families.

**LOW-INCOME FAMILY.** A family whose annual income does not exceed 80% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 80% for areas with unusually high or low income families.

**MANUFACTURED HOME.** A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type. See 24 CFR §§982.620 and 982.621.

**MANUFACTURED HOME SPACE.** In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See 24 CFR §§982.622 to 982.624

**MARKET RENT.** The rent HUD authorizes the owner of FHA insured/subsidized multi-family housing to collect from families ineligible for assistance. For unsubsidized units in an FHA-insured multi-family project in which a portion of the total units receive project-based rental assistance, under the Rental Supplement or Section 202/Section 8 Programs, the Market Rate Rent is that rent approved by HUD and is the Contract Rent for a Section 8 Certificate holder. For BMIR units, Market Rent varies by whether the project is a rental or cooperative.

**MEDICAL EXPENSES.** Those total medical expenses, including medical insurance premiums that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance. (A deduction for elderly or disabled families only.) These allowances are given when calculating adjusted income for medical expenses in excess of 3% of Annual Income.

**MERGER DATE.** October 1, 1999.

**MINOR.** A member of the family household (excluding foster children) other than the family head or spouse who is under 18 years of age.

**MIXED FAMILY.** A family with citizens and eligible immigration status and without citizens and eligible immigration status as defined in 24 CFR §5.504(b)(3)

**MONTHLY ADJUSTED INCOME.** 1/12 of the Annual Income after Allowances or Adjusted Income.

**MONTHLY INCOME.** 1/12 of the Annual Income.

**MUTUAL HOUSING.** Included in the definition of COOPERATIVE.

**NATIONAL.** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**NEAR-ELDERLY FAMILY.** A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.

**NEGATIVE RENT.** Now called Utility Reimbursement. A negative Tenant Rent results in a Utility Reimbursement Payment (URP).

**NET FAMILY ASSETS.** Value of equity in savings, checking, IRA and Keogh accounts, real property, stocks, bonds, and other forms of capital investment. The value of necessary items of personal property such as furniture and automobiles is excluded from the definition.

**NET FAMILY CONTRIBUTION.** Former name for Tenant Rent.

**NON-CITIZEN.** A person who is neither a citizen nor a national of the United States.

**OCCUPANCY STANDARDS.** [Now referred to as **Subsidy Standards**] Standards established by a PHA to determine the appropriate number of bedrooms for families of different sizes and compositions.

**OVER-FMR TENANCY (OFTO).** In the pre-merger Certificate program: A tenancy for which the initial gross rent exceeds the FMR/exception rent limit.

**OWNER.** Any persons or entity having the legal right to lease or sublease a unit to a participant.

**PARTICIPANT.** (Also see "Family" and "Tenant") A family that has been admitted to TDHCA's program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by TDHCA for the family (First day of initial lease term).

**PAYMENT STANDARD.** The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

**PERSON WITH DISABILITIES.** A person who has a disability as defined in 42 U.S.C 423 or a developmental disability as defined in 42 U.S.C. 6001. Also includes a person who is determined, under HUD regulations, to have a physical or mental impairment that is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of such a nature that the ability to live

independently could be improved by more suitable housing conditions. For purposes of reasonable accommodation and program accessibility for persons with disabilities, means an "individual with handicaps" as defined in 24 CFR 8.3. Definition does not exclude persons who have AIDS or conditions arising from AIDS, but does not include a person whose disability is based solely on drug or alcohol dependence (for low-income housing eligibility purposes).

**PHA PLAN.** The annual plan and the 5-year plan as adopted by TDHCA and approved by HUD in accordance with part 903 of this chapter.

**PORTABILITY.** Renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the initial PHA.

**PREMISES.** The building or complex in which the dwelling unit is located, including common areas and grounds.

**PRIVATE SPACE.** In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

**PROCESSING ENTITY.** Entity responsible for making eligibility determinations and for income reexaminations. In the Section 8 Program, the "processing entity" is the "responsible entity."

**PROGRAM.** The Section 8 tenant-based assistance program under 24 CFR Part 982.

**PROGRAM RECEIPTS.** HUD payments to TDHCA under the consolidated ACC, and any other amounts received by TDHCA in connection with the program.

**PUBLIC ASSISTANCE.** Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by Federal, state, or local governments.

**PUBLIC HOUSING AGENCY (PHA).** PHA includes any State, county, municipality or other governmental entity or public body which is authorized to administer the program (or an agency or instrumentality of such an entity), or any of the following:

A consortia of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortia members):

Any other public or private non-profit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or a PHA) on October 21, 1998; or

For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

**REASONABLE RENT.** A rent to owner that is not more than rent charged for comparable units in the private unassisted market, and not more than the rent charged for comparable unassisted units in the premises.

**RECEIVING PHA.** In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

**RECERTIFICATION.** Sometimes called reexamination. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported. There are annual and interim recertifications.

**REGULAR TENANCY.** In the pre-merger certificate program: A tenancy other than an over-FMR tenancy.

**REMAINING MEMBER OF TENANT FAMILY.** Person left in assisted housing after other family members have left and become unassisted.

**RENT TO OWNER.** The total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

**RESIDENCY PREFERENCE.** A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (residency preference area).

**RESIDENCY PREFERENCE AREA.** The specified area where families must reside to qualify for a residency preference.

**RESIDENT ASSISTANT.** A person who lives in an Independent Group Residence and provides on a daily basis some or all of the necessary services to elderly, handicapped, and disabled individuals receiving Section 8 housing assistance and who is essential to these individuals' care or wellbeing. A Resident Assistant shall not be related by blood, marriage or operation of law to individuals receiving Section 8 assistance nor contribute to a portion of his/her income or resources towards the expenses of these individuals.

**RESPONSIBLE ENTITY.** For the public housing and Section 8 tenant-based assistance, project-based certificate assistance and moderate rehabilitation program, the responsible entity means TDHCA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

**SECRETARY.** The Secretary of Housing and Urban Development.

**SECTION 8.** Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

**SECURITY DEPOSIT.** A dollar amount which can be applied to unpaid rent, damages or other amounts to the owner under the lease.

**SERVICE PERSON.** A person in the active military or naval service (including the active reserve) of the United States.

**SHARED HOUSING.** A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type.

**SINGLE PERSON.** A person living alone or intending to live alone.

**SPECIAL ADMISSION.** Admission of an applicant that is not on TDHCA waiting list or without considering the applicant's waiting list position.

**SPECIAL HOUSING TYPES.** See Subpart M of 24 CFR 982, which states the special regulatory requirements for SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

**SPECIFIED WELFARE BENEFIT REDUCTION.** Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

**SPOUSE.** The husband or wife of the head of the household.

**STALKING.** To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to that person, a member of the immediate family of that person, or the spouse or intimate partner of that person.

**SUBSIDIZED PROJECT.** A multi-family housing project (with the exception of a project owned by a cooperative housing mortgage corporation or association) which receives the benefit of subsidy in the form of:

Below-market interest rates pursuant to Section 221(d)(3) and (5) or interest reduction payments pursuant to Section 236 of the National Housing Act; or

Rent supplement payments under Section 101 of the Housing and Urban Development Act of 1965; or

Direct loans pursuant to Section 202 of the Housing Act of 1959; or

Payments under the Section 23 Housing Assistance Payments Program pursuant to Section 23 of the United States Housing Act of 1937 prior to amendment by the Housing and Community Development Act of 1974;

Payments under the Section 8 Housing Assistance Payments Program pursuant to Section 8 of the United States Housing Act after amendment by the Housing and Community Development Act unless the project is owned by a Public Housing Agency;

A Public Housing Project.

**SUBSIDY STANDARDS.** Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

**SUBSTANDARD UNIT.** Substandard housing is defined by HUD for use as a federal preference.

**SUSPENSION/TOLLING.** Stopping the clock on the term of a family's voucher, for such period as determined by TDHCA, from the time when the family submits a request for PHA approval to lease a unit, until the time when TDHCA approves or denies the request. If TDHCA decides to allow extensions or suspensions of the voucher term, TDHCA administrative plan must describe how TDHCA determines whether to grant extensions or suspensions, and how TDHCA determines the length of any extension or suspension.

**TENANCY ADDENDUM.** For the Housing Choice Voucher Program, the lease language required by HUD in the lease between the tenant and the owner.

**TENANT.** (Also see "Family" and "Participant") The person or persons (other than a live-in-aide) who executes the lease as lessee of the dwelling unit.

**TENANT RENT.** The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). For a tenancy in the pre-merger certificate program, tenant rent equals the total tenant payment minus any utility allowance.

**TOTAL TENANT PAYMENT (TTP).** The total amount the HUD rent formula requires the tenant to pay toward gross rent and utility allowance.

**UNIT.** Residential space for the private use of a family.

**UNUSUAL EXPENSES.** Prior to the change in the 1982 regulations, this was the term applied to the amounts paid by the family for the care of minors under 13 years of age or for the care of disabled or handicapped family household members, but only where such care was necessary to enable a family member to be gainfully employed.

**UTILITIES.** Utilities mean water, electricity, gas, other heating, and refrigeration, cooking fuels, trash collection and sewage services. Telephone service is not included as a utility.

**UTILITY ALLOWANCE.** If the cost of utilities (except telephone) including range and refrigerator, and other housing services for an assisted unit is not included in the Contract Rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of a reasonable consumption of such utilities and other services for the unit by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthy living environment.

**UTILITY REIMBURSEMENT.** In the voucher program, the portion of the housing assistance payment which exceeds the amount of the rent to owner.

**UTILITY REIMBURSEMENT PAYMENT.** In the pre-merger certificate program, the amount, if any, by which the Utility Allowance for the unit, if applicable, exceeds the Total Tenant Payment for the family occupying the unit.

**VACANCY LOSS PAYMENTS.** (For pre-merger certificate contracts effective prior to 10/2/95) When a family vacates its unit in violation of its lease, the owner is eligible for 80% of the Contract Rent for a vacancy period of up to one additional month, (beyond the month in which the vacancy occurred) if s/he notifies TDHCA as soon as s/he learns of the vacancy, makes an effort to advertise the unit, and does not reject any eligible applicant except for good cause.

**VERY LARGE LOWER-INCOME FAMILY.** Prior to the change in the 1982 regulations this was described as a lower-income family which included eight or more minors. This term is no longer used.

**VERY LOW INCOME FAMILY.** A Lower-Income Family whose Annual Income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50% of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the pre-merger certificate and voucher programs.

**VETERAN.** A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released there from under conditions other than dishonorable.

**VIOLENT CRIMINAL ACTIVITY.** Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

**VOUCHER (rental voucher).** A document issued by a PHA to a family selected for admission to the voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states the obligations of the family under the program.

**VOUCHER HOLDER.** A family holding a voucher with an unexpired term (search time).

**VOUCHER PROGRAM.** The Section 8 Housing Choice Voucher program.

**WAITING LIST.** A list of families organized according to HUD regulations and PHA policy that are waiting for subsidy to become available.

**WAITING LIST ADMISSION.** An admission from TDHCA waiting list.

**WELFARE ASSISTANCE.** Income assistance from Federal or State welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. FOR THE FSS PROGRAM (24 CFR §984.103(b)), "welfare assistance" includes only cash maintenance payments from Federal or State programs designed to meet a family's ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or Social Security.

**WELFARE RENT.** This concept is used ONLY for pre-merger Certificate tenants who receive welfare assistance on an "AS-PAID" basis. It is not used for the Housing Voucher Program.

If the agency does NOT apply a ratable reduction, this is the maximum a public assistance agency COULD give a family for shelter and utilities, NOT the amount the family is receiving at the time the certification or recertification is being processed.

If the agency applies a ratable reduction, welfare rent is a percentage of the maximum the agency could allow.

**WELFARE-TO-WORK (WTW) FAMILIES.** Families assisted by a PHA with voucher funding awarded to TDHCA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

## **C. GLOSSARY OF TERMS USED IN THE NONCITIZENS RULE**

**CHILD.** A member of the family other than the family head or spouse who is under 18 years of age.

**CITIZEN.** A citizen or national of the United States.

**EVIDENCE OF CITIZENSHIP OR ELIGIBLE STATUS.** The documents which must be submitted to evidence citizenship or eligible immigration status.

**HEAD OF HOUSEHOLD.** The adult member of the family who is the head of the household for purpose of determining income eligibility and rent.

**HUD.** Department of Housing and Urban Development.

**INS.** The U.S. Immigration and Naturalization Service.

**MIXED FAMILY.** A family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status.

**NATIONAL.** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**NONCITIZEN.** A person who is neither a citizen nor national of the United States.

**PHA.** A housing authority who operates Public Housing.

**RESPONSIBLE ENTITY.** The person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status (TDHCA).

**SECTION 214.** Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

**SPOUSE.** Spouse refers to the marriage partner, either a husband or wife, who is someone you need to divorce in order to dissolve the relationship. It includes the partner in a common-law marriage. It does not cover boyfriends, girlfriends, significant others, or "co-heads." "Co-head" is a term recognized by some HUD programs, but not by public and Indian housing programs.