



**CITY OF PITTSBURG
AGENDA**

APRIL 15, 2024

**CITY HALL COUNCIL CHAMBER
65 CIVIC AVENUE, PITTSBURG, CA**

**CLOSED SESSION
6:30 P.M.**

**REGULAR MEETING
7:00 P.M.**

**CITY COUNCIL
HOUSING AUTHORITY
PITTSBURG ARTS AND COMMUNITY FOUNDATION
PITTSBURG POWER COMPANY
SOUTHWEST PITTSBURG GEOLOGIC HAZARD ABATEMENT DISTRICT II
SUCCESSOR AGENCY**

PRESIDING

**Juan Antonio Banales, Mayor/Chair
Jelani Killings, Vice- Mayor/Chair
Dionne Adams, Council Member/Board Member
Angelica Lopez, Council Member/Board Member
Shanelle Scales-Preston, Council Member/Board Member**

**FOR HOUSING AUTHORITY:
S.L. Floyd, Housing Authority Member
Annie Hill Herring, Housing Authority Member**

Pittsburg City Council regular meetings are held the first and third Mondays of each month at 7:00 p.m. The Housing Authority meets in conjunction with the City Council on the third Monday of each month. The Pittsburg City Council meets regularly in the Council Chamber at 65 Civic Avenue, unless otherwise noted above. The City Council also sits as the Board of Directors of several other City agencies. The stipends for all agency members conform to state statutes governing compensation amounts. All other Agencies meet on an as needed basis and will be listed above if applicable. Copies of the open session agenda packets, which are distributed to the City Council, are on file in the office of the City Clerk, 65 Civic Avenue, Pittsburg, California, and are available for public inspection, beginning 72 hours in advance, during normal business hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except from noon to 1:00 p.m. and City holidays). The agenda and reports are also located on the City's website at www.pittsburgca.gov. Additionally, if any reports or documents, which are public records, are distributed to the City Council less than 72 hours before the meeting, those reports and documents will also be available for public inspection in the City Clerk's Office and on the day of the meeting in the Council Chamber at the public counter area below the dais.

AUDIENCE REMARKS

The Audience Remarks period is for the public to comment on any items scheduled to be heard during the Closed Session portion of the meeting, if applicable.

6:30 PM - CONVENE IN CLOSED SESSION

1. Housing Authority Governing Board
CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Initiation of litigation pursuant to Section 54956.9(d)(4)
Number of cases: one
2. City Council
CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Initiation of litigation pursuant to Section 54956.9(d)(4)
Number of cases: one

7:00 PM - CONVENE IN OPEN SESSION FOR REGULAR MEETING

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

PRESENTATIONS

3. Bliss Avenue Project

PROCLAMATIONS

4. Earth Day and Civic Pride Day
5. Arbor Day

CITY MANAGER REPORTS/REMARKS

The City Manager may make brief announcements or informal comments at this time and brief the Council on items of interest. (No Action Required)

PUBLIC COMMENTS

Members of the audience who wish to address the City Council or Agency Boards on issues that are not scheduled for the agenda and on any items listed as part of the Consent Calendar should complete a Speaker's Card available at the dais. Please read the card carefully in order to fill out the card properly. Submit the completed card to the City Clerk before the item is called, preferably before the meeting begins. Individuals will be given three minutes to address the Council unless additional time is allowed as provided for spokespersons. Prior to speaking, each member of the public shall state their name and business and City of residence in a clear and audible tone of voice. (No Action Required)

COMMITTEE REPORTS

Council Members may make a report on their committee assignments at this time. (see attached list of adhoc committees and other public agencies in which Council members participate). (No Action Required)

HOUSING AUTHORITY

PUBLIC HEARING

6. Adoption of a Housing Authority Resolution Approving the Public Housing Agency Administrative Plan for 2024 and Directing the Executive Director to Submit the Public Housing Agency Administrative Plan for 2024 to the U.S. Department of Housing and Urban Development

The Housing Authority of the City of Pittsburgh (Housing Authority) maintains an Administrative Plan which outlines the policies and procedures of the Housing Authority. As required compliance with the U.S. Department of Housing and Urban Development (HUD), the Housing Authority has revised its Administrative Plan to incorporate significant modifications or amendments to policies which address the delivery of housing services in the community (Administrative Plan for 2024).

CONSIDERATION

7. Adoption of a Housing Authority Resolution Amending the Fiscal Year 2023-24 Budget Based on Year-End Revenue and Expenditure Projections

Staff has completed a Mid-Year Review of the Fiscal Year 2023-24 budget and has determined that budget adjustments are needed to meet year-end projections.

CONSENT CALENDAR

8. Minutes of March 18, 2024

HOUSING AUTHORITY MEMBER REMARKS

ADJOURNMENT OF THE HOUSING AUTHORITY

COMBINED CITY COUNCIL, PITTSBURG POWER COMPANY, SOUTHWEST PITTSBURG GHAD II AND SUCCESSOR AGENCY CONSIDERATION

9. Adoption of City Council, Pittsburgh Power Company, Successor Agency for the Redevelopment Agency of the City of Pittsburgh, and SW Pittsburgh Geological Hazard Abatement District II Resolutions Amending the Fiscal Year 2023-24 Budget Based on Year End Revenue and Expenditure Projections

Staff has completed a Mid-Year Review of the Fiscal Year 2023-24 budget and has determined that budget adjustments are necessary to meet year-end projections.

CONFLICT OF INTEREST STATEMENT

City Council/Agency Members may make any conflict of interest declarations pertaining to Consent Calendar items at this time.

COMBINED CITY COUNCIL, PITTSBURG ARTS AND COMMUNITY FOUNDATION,
PITTSBURG POWER COMPANY, SOUTHWEST PITTSBURG GHAD II AND
SUCCESSOR AGENCY CONSENT CALENDAR

10. Minutes of March 18, 2024

11. Adoption of a City Council Resolution Accepting Project 3119 Police Department Evidence and Intake Room Improvements as Complete, Authorizing the City Engineer to File a Notice of Completion, and Allocating Remaining Funds

Project 3119- Police Department Evidence and Intake Room Improvements (the "Project") facilitated demolition work, supply storage, installation of mobile shelving units, incorporation of seismic safety equipment, modification of cubicles, addition of storage units, and flooring installation. This resolution will accept the construction contract as complete, authorize the City Engineer to file a Notice of Completion, and allocate remaining funds to Project 3120 Police Women's Locker Room Expansion 2.

12. Adoption of a City Council Resolution Accepting the Plans and Specifications and Awarding Project 2028-Crestview Drive Safety Improvements

Project 2028-Crestview Drive Safety Improvements (the "Project") installs pavement markings, raised medians, and pedestrian crossings at six intersections along Crestview Drive at Nina Place, Alta Vista Circle, Kingsberry Place, Atherton Avenue, William Way and Crestview Lane. If adopted, this resolution will accept the Project plans and specifications and award a construction contract to RK Engineering, Inc.

13. Adoption of a City Council Resolution Allocating Additional Funds, Accepting the Plans and Specifications, and Awarding Project 8336-Americana Park Bypass Channel

Project 8336-Americana Park Bypass Channel (the Project) addresses flooding of North Parkside Drive and the detention basin, through construction of a bypass channel. If adopted, this resolution will allocate additional funds to the Project; accept the project plans and specifications, and award a construction contract to Kroeker, Inc.

14. Adoption of a City Council Resolution Authorizing the Execution of Consulting Services Agreement with RCH Group, Planning & Environmental Consulting, Inc.

The proposed item would authorize the City Manager to execute a Consulting Services Agreement with RCH Group, Planning & Environmental Consulting, Inc. in an amount not to exceed One Hundred and Nineteen Thousand, Four Hundred and Eighty dollars (\$119,480.00) for CEQA Consultant Fees and would allocate Eighty-Two Thousand, Four Hundred dollars (\$82,400) for the consultant budget for contract planning services related to the Pencco Iron Salts Plant Project on leased land located at the Corteva Agriscience campus located at 1901 Loveridge Road.

15. Adoption of Seven City Council Resolutions to Find Developers in Compliance with their Respective Development Agreements for: Southwest (San Marco), Tuscany Meadows, Trans Bay Cable, Edgewater, Sky Ranch II, Montreux, and Columbia Solar

State law requires local jurisdictions to conduct a periodic review of active development agreements (DAs) within the community. For the calendar year 2023, staff has conducted reviews of seven active DAs, including: Southwest (San Marco) Development, Tuscany Meadows Subdivision, Trans Bay Cable, Edgewater Development, Sky Ranch II Subdivision, Montreux Subdivision, and Columbia Solar. Staff has found each developer to be in compliance with the terms of their respective DA, and as such, recommends the City Council adopt seven resolutions finding good faith compliance and authorizing the City Manager to execute Certificates of Compliance as appropriate.

COUNCIL REQUEST FOR FUTURE AGENDA ITEMS

Council Members may request items to be considered for future agendas. An item will only be brought forward with a majority vote and will appear on a future agenda with staff recommendations for further Council consideration.

COUNCIL MEMBER REMARKS

Council Members may make brief announcements or informal comments at this time. (No Action Required)

ADJOURNMENT TO MAY 6, 2024

NOTICE TO PUBLIC

GENERAL INFORMATION

Copies of the open session agenda packets, as distributed to the City Council, are on file in the office of the City Clerk, 65 Civic Avenue, Pittsburg, California, and are available for public inspection, beginning 72 hours in advance, during normal business hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except City holidays). Full agenda packets are also located on the City's website at www.pittsburgca.gov. If any reports or documents, which are public records, are distributed to the City Council less than 72 hours before the meeting, those reports or documents will be available for public inspection in the City Clerk's Office and on the day of the meeting in the Council Chamber at the public counter area below the dais.

SPEAKER'S CARD

Members of the audience who wish to address the City Council on issues that are not scheduled for the agenda and on any items listed as part of the agenda should complete a Speaker's Card available at the dais. Please read the card carefully in order to fill out the card properly. Submit the completed card to the City Clerk before the item is called, preferably before the meeting begins. Individuals will be given up to three minutes to address the Council unless additional time is allowed as provided for spokespersons. Speakers are not permitted to yield their time to another speaker. Prior to speaking, each member of the public shall state their name and business and City of residence in a clear and audible tone of voice. Pursuant to the Brown Act, no action may be taken by the City Council on items not already scheduled on the agenda; however, the City Council may refer your comments/concerns to staff or request that the item be placed on a future agenda.

PUBLIC HEARINGS

Persons who wish to speak on Public Hearings listed on the agenda will be heard when the Public Hearing is opened, except on Public Hearing items previously heard and closed to public comment. After the public has commented, the item is closed to public comment and brought to the Council/Agency level for discussion and action. Further comment from the audience will not be received unless requested by the Council/Agency.

There is a 90-day limit for the filing of a challenge in the Superior Court to certain City administrative decisions and orders which require a hearing by law, the receipt of evidence, and the exercise of discretion. The 90-day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge an action taken by the City Council in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised in the public hearing, or in written correspondence delivered to the City Council prior to or at the public hearing. The City Council may be requested to reconsider a decision if the request is made prior to the next City Council meeting, regardless of whether it is a regular or special meeting.

NOTICE TO THE DISABLED AND VISUALLY OR HEARING IMPAIRED

In compliance with the Americans with Disabilities Act, the City of Pittsburg will provide special assistance for disabled residents. Upon request, an agenda for any meeting shall be made available in appropriate alternative formats. The Council Chamber is equipped with sound amplifier units for use by the hearing impaired. The units operate in conjunction with the Chamber's sound system. You may request the sound amplifier from the City Clerk for personal use during Council meetings. If you need special assistance to participate in this meeting, or are requesting a specially formatted agenda, please contact the City Clerk at (925) 252-4850. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format. (28 CFR 35.102-35.104 ADA Title II)

DISRUPTIVE CONDUCT

The Council requests that you observe the order and decorum of our Council Chamber by turning off or setting to vibrate all cellular telephones and electronic devices, and that you refrain from making personal, impertinent, or slanderous remarks. Boisterous and disruptive behavior while the Council is in session, and the display of signs in a manner which violates the rights of others or prevents others from watching or fully participating in the Council meeting, is a violation of our Municipal Code and any person who engages in such conduct can be ordered to leave the Council Chamber by the Mayor.

LIVE MEDIA BROADCASTING ADVISEMENT

City Council meetings are webcast live on the City's website at www.pittsburgca.gov on the Agendas and Live Meetings page. Past meetings and approved minutes are also archived on that webpage. Watch the live meeting via the City's webcast (www.pittsburgca.gov - Agendas and Live Meetings), on Comcast Channel 24 Delta TV, AT&T U-Verse Channel 99 Delta TV. Contact the City Clerk's office at (925) 252-4850 for more information

City Council Agency/Liaison/Subcommittee Assignments as of February 20, 2024

OUTSIDE AGENCY BOARDS	COUNCIL MEMBER(S)	TYPE	MEETS	TIME	STAFF
ABAG	Dionne Adams / Jelani Killings Alternate	Standing	Annual		G. Evans
Delta Diablo*	Juan Banales / Shanelle Scales-Preston Alternate	Standing	2nd Wednesday	4:30 PM	J. Samuelson
East Co. Co. County Habitat Conservancy	Angelica Lopez / Juan Banales Alternate	Standing	4th Monday Bi-Monthly	2:00 PM	J. Davis
East County Water Management	Juan Banales / Jelani Killings Alternate	Standing	Annual		J. Samuelson
MCE Clean Energy Board	Shanelle Scales-Preston / Angelica Lopez Alternate	Standing	Quarterly	7:00 PM	D. Buchanan
TRANSPLAN / ECCRFFA	Shanelle Scales-Preston / Juan Banales Alternate	Standing	2nd Thursday	6:30 PM	J. Samuelson
Tri-Delta Transit (2 reps)**	Shanelle Scales-Preston & Dionne Adams / Jelani Killings Alternate	Standing	4th Wednesday	4:00 PM	J. Samuelson

LIAISON TO	COUNCIL MEMBER(S)	TYPE	MEETS	TIME	STAFF
East Bay League of California Cities	Shanelle Scales-Preston / Jelani Killings Alternate	Standing	3rd Thursday		G. Evans
Los Medanos Health Advisory Committee	Shanelle Scales-Preston & Jelani Killings	Ad Hoc	As needed		M. Aliotti
Mayor's Conference	Juan Banales / Jelani Killings Alternate	Standing	1st Thursday	6:30 PM	G. Evans
Pittsburg Police Activities League (PAL)	Shanelle Scales-Preston & Angelica Lopez / Dionne Adams Alternate	Standing	Monthly		S. Albanese
School Districts Committee (2x2)	Jelani Killings & Angelica Lopez / Dionne Adams Alternate	Standing	Quarterly		M. Aliotti

SUBCOMMITTEES	COUNCIL MEMBER(S)	TYPE	MEETS	TIME	STAFF
Budget Sustainability	Juan Banales & Jelani Killings	Ad Hoc	As needed		G. Evans
Community and Economic Development	Jelani Killings & Dionne Adams / Juan Banales Alternate	Standing	2nd Wednesday	5:00 PM	J. Davis
Finance Management	Juan Banales & Jelani Killings / Shanelle Scales-Preston Alternate	Standing	3rd Friday	4:00 PM	P. Rodrigues
Government Performance	Juan Banales & Jelani Killings	Ad Hoc	4th Friday	4:00 PM	J. Brizel
Infrastructure and Transportation	Shanelle Scales-Preston & Dionne Adams / Juan Banales Alternate	Standing	4th Thursday	5:30 PM	J. Samuelson
Life Enrichment	Dionne Adams & Angelica Lopez / Shanelle Scales-Preston Alternate	Standing	3rd Wednesday	5:30 PM	K. Simonton
Pittsburg Arts and Community Foundation	Shanelle Scales-Preston & Jelani Killings	Standing	As needed		K. Simonton
Public Safety	Shanelle Scales-Preston & Angelica Lopez / Jelani Killings Alternate	Standing	1st Wednesday	5:30 PM	S. Albanese
Tobacco, Cannabis, Alcohol Policy Review	Shanelle Scales-Preston & Jelani Killings	Ad Hoc	As needed		G. Evans

*Stipend of \$170 per month

** Stipend of \$100 per month



City of Pittsburg

65 Civic Avenue • Pittsburg, California 94565

Proclamation

EARTH DAY and CIVIC PRIDE DAY 2024

WHEREAS, the first Earth Day was celebrated on April 22, 1970, with the goal of inspiring environmental awareness and encouraging the conservation, protection, and appreciation of our nation's natural resources; and

WHEREAS, the theme for 2024 is "Planet vs. Plastics". This is about fighting the big problem of plastic all over the world; and

WHEREAS, the goal is to make much less plastic, 60% less by 2040; and

WHEREAS, Earth Day organizations wants to bring people from different places together so we can have a future without so much plastic; and

WHEREAS, this is not just about having less trash, but it is also about keeping people and the environment healthy; and

WHEREAS, through the City's Civic Pride Day, the City and the Pittsburg Unified School District invite residents to take pride in Pittsburg by joining a community litter removal effort on April 20th by cleaning up Highlands Elementary School and Buchanan Park.

NOW, THEREFORE, I, Juan Antonio Banales, on behalf of the City Council of the City of Pittsburg, do hereby encourage the celebration of Earth Day and Civic Pride Day by getting residents involved in helping clean up our city.



Juan Antonio Banales, Mayor

Alice E. Evenson, City Clerk

ATTEST: April 15, 2024



City of Pittsburg

65 Civic Avenue • Pittsburg, California 94565

Proclamation

**ARBOR DAY
APRIL 26, 2024**

WHEREAS, in 1872, the Nebraska Board of Agriculture established a special day to be set aside for the planting of trees; and

WHEREAS, Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees can be a solution to combating climate change by reducing the erosion of our precious topsoil by wind and water, cutting heating and cooling costs, moderating temperature, cleaning the air, producing life-giving oxygen, and providing habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products; and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal.

NOW, THEREFORE, I, Juan Antonio Banales, on behalf of the City Council of the City of Pittsburg, do hereby proclaim April 26, 2024 as Arbor Day in the City of Pittsburg and encourage all residents to support efforts to protect our trees and woodlands and to plant trees to gladden the heart and promote the well-being of this and future generations.



Juan Antonio Banales, Mayor

Alice E. Evenson, City Clerk

ATTEST: April 15, 2024



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Chair and Governing Board Members

FROM: Garrett Evans, Executive Director

SUBJECT: Adoption of a Housing Authority Resolution Approving the Public Housing Agency Administrative Plan for 2024 and Directing the Executive Director to Submit the Public Housing Agency Administrative Plan for 2024 to the U.S. Department of Housing and Urban Development

MEETING DATE: April 15, 2024

EXECUTIVE SUMMARY

The Housing Authority of the City of Pittsburg (Housing Authority) maintains an Administrative Plan which outlines the policies and procedures of the Housing Authority. As required compliance with the U.S. Department of Housing and Urban Development (HUD), the Housing Authority has revised its Administrative Plan to incorporate significant modifications or amendments to policies which address the delivery of housing services in the community (Administrative Plan for 2024).

FISCAL IMPACT

Adoption of the Administrative Plan for 2024 has no fiscal impact to the General Fund.

RECOMMENDATION

Staff recommends the Governing Board of the Housing Authority open the public hearing, receive public comment, close the public hearing, and adopt the Resolution for approval of the Administrative Plan for 2024.

BACKGROUND

When there are significant modifications to the policies of the Housing Authority, a public hearing is required regarding these policy changes. The Housing Authority made minor revisions in Chapters 2, 3, 12, 14, 15, 17, 18, and 19, and significant modifications in Chapters 6, 7, 8 and 11. These changes are reflected in a redline format in the Administrative Plan for 2024.

SUBCOMMITTEE FINDINGS

The Administrative Plan for 2024 has not been discussed in a subcommittee.

STAFF ANALYSIS

The Housing Authority administers programs with an annual grant as determined by HUD. Various sections of the Administrative Plan for 2024 were modified, specifically, Chapters 6, 7 and 11, to account for the Housing Opportunity through Modernization Act of 2016 (HOTMA) changes, including the Final Rule issued February 14, 2023, Notice PIH 2023-27, and other sources of HUD guidance on the topic. References to Housing Quality Standards (HQS) inspections were replaced with National Standards for the Physical Inspection of Real Estate (NSPIRE) inspections, new standards, and requirements. The term human trafficking has been included in the Violence Against Women Act (VAWA) language, in addition to other VAWA clarifications to better align with current guidelines such as the implementation Guidance for VAWA 2022 published in the Federal Register on January 4, 2023.

There is also a new section on Restriction on Assistance Based on Assets. Additional changes include exceptions to utility allowances as a reasonable accommodation.

The changes in Chapter 8 were made to include the implementation of HUD's NSPIRE regulations and standards in order to comply with HUD Notice PIH 2023-28. NSPIRE inspections will replace HQS inspections beginning October 1, 2024.

In summary, none of these changes will negatively impact the families being assisted but will provide the Housing Authority more current and compliant language to HUD's regulatory updates and guidelines.

The Housing Authority has revised the Administrative Plan in accordance with HUD's requirements. This plan defines the agency's goals for providing housing and offering support to families needing such assistance. The Housing Authority posted the Public Notice for comment on February 29, 2024, and has not received comments or responses.

ATTACHMENTS: Resolution
 Administrative Plan for 2024

Report Prepared By: Tanya Ray, Senior Housing Program Analyst

BEFORE THE GOVERNING BOARD OF THE HOUSING AUTHORITY
OF THE CITY OF PITTSBURG

In the Matter of:

Approving the Public Housing Agency)
Administrative Plan for 2024 and Directing the)
Executive Director to Submit the Public)
Housing Agency Administrative Plan for 2024)
To the U.S. Department of Housing and Urban)
Development)

RESOLUTION NO. 24-

WHEREAS, the Housing Authority of the City of Pittsburgh (Housing Authority) maintains an Administrative Plan which outlines the policies and procedures of the Housing Authority. As required compliance with the U.S. Department of Housing and Urban Development (HUD), the Housing Authority has revised its Administrative Plan to incorporate significant modifications or amendments to policies which address the delivery of housing services in the community (Administrative Plan for 2024); and

WHEREAS, a Public Notice was published in the East County Times on February 29, 2024; commencing the 45-day period to submit written comments. The public hearing scheduled for April 15, 2024 is to address any written comments received during the noticing period and to allow comments prior to the approval of the Administrative Plan for 2024 by Governing Board of the Housing Authority; and

WHEREAS, the Public Housing Agency Administrative Plan for 2024 was also made available for review at the Housing Authority office, located at 916 Cumberland Street, Pittsburgh, CA 94565; and

WHEREAS, the adoption of the Housing Authority Administrative Plan for 2024 is in the best interest of the residents of Pittsburgh and satisfies HUD's requirements to update and adopt the Administrative Plan.

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the Housing Authority of the City of Pittsburgh hereby finds the Administrative Plan for 2024 a thorough and complete document, adopts this Resolution and approves the Administrative Plan for 2024.

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the Housing Authority's obligations pursuant to this Resolution.

PASSED AND ADOPTED by the Governing Board of the Housing Authority of the City of Pittsburgh at a regular meeting on the 15th day of April 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Chair

ATTEST:

Alice E. Evenson, Agency Secretary

Housing Authority of the City of Pittsburg

Style Definition: Level 1 Bullet: Indent: Left: 0", Tab stops: Not at 1"

Housing Authority of the City of Pittsburg

ADMINISTRATIVE PLAN

FOR THE

HOUSING CHOICE VOUCHER PROGRAM



916 Cumberland Street
Pittsburg, CA 94565

Approved by the HACP Board:

~~3-20-2023~~4-15-2024

Submitted to HUD:

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Housing Authority of the City of Pittsburgh

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Introduction

ABOUT THE ~~REFERENCES CITED IN THE MODEL~~ ADMINISTRATIVE PLAN

Chapter 1 OVERVIEW OF THE PROGRAM AND PLAN

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Chapter 7 VERIFICATION

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, Notice PIH ~~2010-18~~2023-27]

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Chapter 8
HOUSING QUALITY STANDARDS AND RENT REASONABLENESS
DETERMINATIONS
 [24 CFR 982 Subpart I and 24 CFR 982.507]

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Chapter 18

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GLOSSARY

- A. Acronyms Used in the Housing Choice Voucher Program
- B. Subsidized Housing Terminology

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Introduction

ABOUT THE ADMINISTRATIVE PLAN

THE REFERENCES CITED IN THE ~~MODEL~~ ADMINISTRATIVE PLAN

~~AUTHORITIES FOR POLICIES IN THE MODEL~~ ADMINISTRATIVE PLAN

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The authority for public housing agency (PHA) policies is derived from many sources.

Primary among these sources are federal statutes, federal regulations, and guidance issued by the United States Department of Housing and Urban Development (HUD). State law also directs PHA policy. State law must be followed where such law exists and does not conflict with federal regulations. Industry practice may also be used to develop policy as long as it does not conflict with federal requirements or prohibitions.

HUD

HUD provides the primary source of PHA policy through federal regulations, HUD notices, and handbooks. Compliance with federal regulations, current HUD notices, and current HUD handbooks is mandatory.

HUD also provides guidance to PHAs through other means such as HUD-published guidebooks, expired HUD notices, and expired handbooks. Basing PHA policy on HUD guidance is optional, as long as PHA policies comply with federal law, federal regulations, and mandatory policy. Because HUD has already determined that the guidance it provides is consistent with mandatory policies, PHA reliance on HUD guidance provides the PHA with a “safe harbor.”

Material posted on the HUD website can provide further clarification of HUD policies. For example, FAQs on the HUD website can provide direction on the application of federal regulations in various aspects of the program.

State Law

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

Industry Practice

Where no law or HUD authority exists on a particular subject, industry practice may support PHA policy. Industry practice refers to a way of doing things or a policy that has been adopted by a majority of PHAs.

RESOURCES CITED IN THE **MODEL** ADMINISTRATIVE PLAN

The **model** administrative plan cites several documents. Where a document or resource is cited frequently, it may be abbreviated. Where it is cited only once or twice, the **model** administrative plan may contain the entire name of the document or resource.

FollowingThe following is a key to abbreviations used for various sources that are frequently cited in the administrative plan and a list of references and document locations that are referenced in the **model** administrative plan or that may be helpful to you.

Abbreviations

Throughout the **model** administrative plan, abbreviations are used to designate certain documents in citations. The following is a table of abbreviations of documents cited in the **model** administrative plan.

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

Resources and Where to Find Them

The following is a list of resources helpful to the PHA or referenced in the model administrative plan, and the online location of each.

The HUD Web site is <http://portal.hud.gov/hudportal/HUD>.

Guidebooks, handbooks and other HUD resources may be found at the *HUDClips Web site*:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips.

Document and Location
Code of Federal Regulations http://www.gpoaccess.gov/cfr/index.html https://www.ecfr.gov/
Earned Income Disregard FAQ www.hud.gov/offices/pih/phr/about/ao_faq_eid.cfm
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule http://edocket.access.gpo.gov/2008/pdf/E8-18435.pdf http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf
Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data http://www.hud.gov/offices/pih/programs/ph/rhiip/docs/eivsecguidepha.pdf https://www.hud.gov/sites/documents/EIVSECGUIDEPHA.PDF

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Executive Order 11063 http://www.hud.gov/offices/fheo/FHLaws/EXO11063.cfm https://www.archives.gov/federal-register/codification/executive-order/11063.html
Federal Register http://www.access.gpo.gov/su_docs/aces/fr-cont.html https://www.federalregister.gov/
General Income and Rent Determination FAQs www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm
Housing Choice Voucher Program Guidebook (7420.10G), April 2001 Updated Chapters www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook
HUD-50058 Instruction Booklet http://portal.hud.gov/hudportal/documents/huddoc?id=50058i.pdf HOTMA Final Rule https://www.federalregister.gov/documents/2023/02/14/2023-01617/housing-opportunity-through-modernization-act-of-2016-implementation-of-sections-102-103-and-104?utm_campaign=subscription+mailing+list&utm_source=federalregister.gov&utm_medium=email
HOTMA Implementation Notice, PIH 2023-27 https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-27pihn.pdf
Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004 http://www.hud.gov/offices/fheo/library/hud DOJstatement.pdf https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf
Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007 http://www.hud.gov/offices/fheo/promotingfh/FederalRegisterpublishedguidance.pdf https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf
Notice PIH 2012-10, Verification of Social Security Numbers (SSNs) 2010-26 (HA), Nondiscrimination and Supplemental Security Accessibility Notice Income (SSI) Benefits; and Effective Use of the Enterprise Income Verification (EIV) System's Identity Verification Report http://portal.hud.gov/huddec/pih2012-10.pdf https://www.hud.gov/sites/documents/DOC_8993.PDF

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Notice PIH 2010-182017-12, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System

<http://www.hud.gov/offices/pih/publications/notices/10/pih2010-18.pdf><https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF>

Notice PIH 2010-26 (HA), Nondiscrimination and Accessibility Notice

<http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf>**VAWA Resources**

<https://www.hud.gov/vawa>

OMB Circular A-133

http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2010

Project-Based Voucher Program; Final Rule

<http://www.gpo.gov/fdsys/pkg/FR-2005-10-13/pdf/05-20035.pdf>

Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions.

www.hud.gov/offices/pih/programs/ph/rhiip/faq.cfm

VAWA Final Rule

<http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf>

Verification FAQ

www.hud.gov/offices/pih/programs/ph/rhiip/faq_verif.cfm

Verification Guidance, March 2004 (attachment to Notice PIH 2004-1)

<http://www.hud.gov/offices/pih/publications/notices/04/verifguidance.pdf>

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The HUD Web site is <http://portal.hud.gov/hudportal/HUD>.

Guidebooks, handbooks and other HUD resources may be found at the *HUDClips Web* site:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips

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****This Administrative Plan first explains HUD's policies section by section by defining what is required of all housing authorities also known as PHAs. The policies of the Housing Authority – Housing Authority of the City of Pittsburgh (HACP), ~~modeled~~ after HUD's policies, specifically pertains to this Housing Authority and is explained as a subsection to each HUD policy.***

Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

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

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

There are three parts to this chapter:

Part I: The Public Housing Agency (PHA). This part includes a description of the

PHA, its jurisdiction, its programs, and its mission and intent.

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

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

PART I: HOUSING AUTHORITY OF THE CITY OF PITTSBURG

1-I.A. OVERVIEW

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

1-I.B. ORGANIZATION AND STRUCTURE OF THE PUBLIC HOUSING AGENCY

The HCV program, also known as Section 8, is a tenant-based assistance and is funded by the federal government and administered by the **Housing Authority of the City of Pittsburgh also known as the HACP** for the jurisdiction of the **City of Pittsburgh in the County of Contra Costa**.

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

Formal actions of the HACP are taken through written resolutions, adopted by the Board and entered into the official records of the HACP.

The principal staff member of the HACP is the executive director (ED), hired by the City Council of the City of Pittsburgh. The ED is charged to hire the Housing Manager who is directly responsible for carrying out the policies established by the Board and is delegated the responsibility for hiring, training and supervising the HACP staff in order to manage the day-to-day operations of the HACP. The Housing Manager under the direction of the ED is responsible for ensuring compliance with federal and state laws and directives for the programs managed. In addition, the Housing Manager's duties include budgeting and financial planning for the HACP.

1-I.C. Housing Authority of the City of Pittsburgh's MISSION

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

resource allocation choices, satisfying clients and stakeholders, and making decisions.

HACP Policy:

The HACP's mission is to provide safe, decent and sanitary housing conditions for very low-income families and to manage resources efficiently. The HACP is committed to promote personal, economic, and social upward mobility to provide families the opportunity to make the transition from subsidized to non-subsidized housing.

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1-I.D. THE Housing Authority of the City of Pittsburgh's PROGRAMS

The following programs are included under this Administrative Plan:

HACP Policy:

The HACP's Administrative Plan is applicable to the operation of the Housing Choice Voucher (HCV) program, the Project Based Voucher (PVB) program, the Veteran's Affairs Supportive Housing (VASH) and the Housing Choice Voucher Homeownership program.

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1-I.E. THE Housing Authority of the City of Pittsburgh's COMMITMENT TO ETHICS AND SERVICE

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

- Administer applicable federal and state laws and regulations to achieve high ratings in performance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing, in compliance with program housing quality standards, for very low-income families while ensuring that family rents are fair, reasonable, and affordable.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational, and other human service needs.
- Promote fair housing and equal opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.
- Promote a housing program which maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.
- Promote a market-driven housing program that will help qualified low-income families be successful in obtaining affordable housing and increase the supply of housing choices for such families.
- Create positive public awareness and expand the level of family, owner, and community support in accomplishing the HACP's mission.

- Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.
- Administer an efficient, high-performing agency through continuous improvement of the HACP's support systems and a high level of commitment to our employees and their development.

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

1-I.F. LOCAL GOALS/OBJECTIVES [24 CFR 982.1]

For the next five years, the agency has established the following primary objectives:

Objective One: To assure that the housing subsidy programs for which it is funded are well run. The HACP cannot meet all the housing needs of the low-income population in Pittsburgh. Primarily, the HACP is funded to operate the HCV Program. Consequently, its first priority is to assure that this program is efficient which is defined as a content score of at least 90% and above on the Section 8 Management Assessment Program (SEMAP). Currently, with a score of 100%, the HACP is considered a "High Performer" under SEMAP. The HACP plans to maintain that score at that level for the period covered by this Administrative Plan.

Objective Two: To expand the number of housing opportunities. Although there is no new funding for low-income housing, the HACP continues to seek ways of expanding the supply of affordable housing. In that regard, the HACP plans to continue meeting with landlords to inform and encourage participation in the program.

Objective Three: To increase the number of tenant-based assistance through the Veterans Assisted Supportive Housing Program (VASH). This change will likely have a significant impact on the HACP as the estimated number of units is expected to increase over the next couple of years.

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PART II: THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

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

The intent of this section is to provide the public and staff with information related to the overall operation of the program. There have been many changes to the program since its inception in 1874 and a brief history of the program will assist the reader to better understand the program.

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

The **Housing and Community Development Act of 1974** created a new federally assisted housing program – the Section 8 Existing program (also known as the Section 8 Certificate program). The Housing and Community Development Act of ~~1874~~1974 represented a significant shift in federal housing strategy from locally owned public housing to privately owned rental housing.

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

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

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

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

From ~~1887~~1987 through ~~1899~~1999, public housing agencies managed both the

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

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

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

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

On July 29, 2016, the **Housing Opportunity Through Modernization Act of 2016 (HOTMA)** was signed into law. HOTMA made numerous changes to statutes governing HUD programs, including sections of the United States Housing Act of 1937. Title I of HOTMA contains 14 different sections that impact the public housing and Section 8 programs. The Final Rule implementing broad changes to income and asset in Sections 102 and 104 of HOTMA, and for PHAs that administer the public housing program over-income provisions in Section 103, was officially published in the *Federal Register* on February 14, 2023. On September 29, 2023, HUD issued notice **PIH 2023-27**, which provided guidance to PHAs on the implementation of the program changes described in the Final Rule.

1-II.B. HOUSING CHOICE VOUCHER PROGRAM BASICS

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by HUD. The HACP is afforded choices in the operation of the program which are included in the HACP’s Administrative Plan, a document approved by the Board of the HACP.

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

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

Even though the family is determined to be eligible for the program, the owner has the responsibility of approving the family as a suitable renter. The HACP continues to make

payments to the owner as long as the family is eligible for assistance and the housing unit continues to qualify under the program.

1-II.C. THE HOUSING CHOICE VOUCHER PARTNERSHIPS

To administer the HCV program, the HACP enters into a contractual relationship with HUD (Consolidated Annual Contributions Contract). The HACP also enters into contractual relationships with the assisted family and the owner or landlord of the housing unit.

For the HCV program to work and be successful, all parties involved, HUD, the HACP, 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 the parties execute to participate in the program.

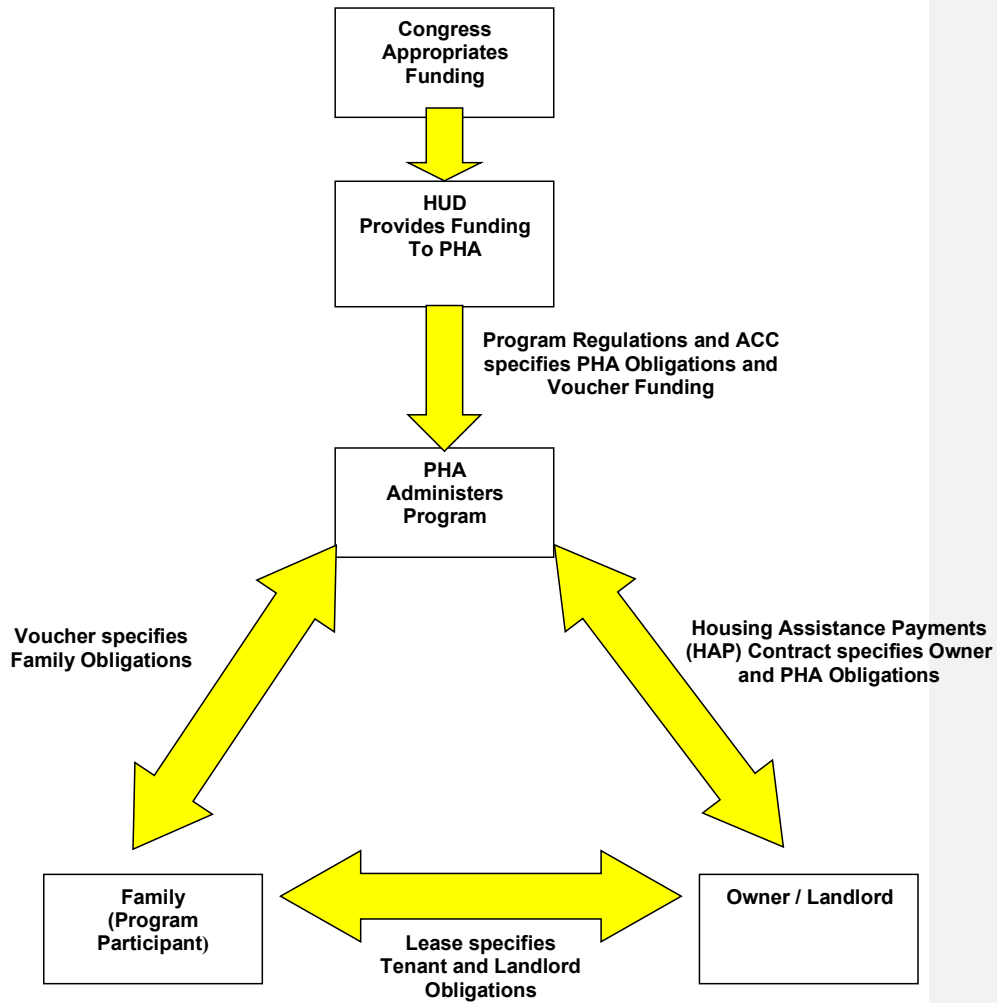
~~that the parties execute to participate in the program.~~

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

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The HCV Relationships:



What Does HUD Do?

HUD has the following major responsibilities:

- Develop regulations, requirements, handbooks, notices, and other guidance to implement HCV housing program legislation passed by Congress
- Allocate HCV program funds to 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 the Housing Authority of the City of Pittsburgh Do?

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

- Establish local policies to administer the program
- Review applications from interested applicants to determine whether they are eligible for the program
- Maintain a waiting list and process families for admission
- Issue vouchers to eligible families and provide information on how to lease a unit
- Conduct outreach to owners, with special attention to owners outside areas of poverty or minority concentration
- Approve the rental unit (including assuring compliance with Housing Quality Standards and rent reasonableness), the owner, and the tenancy
- Make housing assistance payments to the owner in a timely manner
- Recertify families for continued eligibility under the program
- Ensure that owners and families comply with their contractual obligations
- 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, the HACP'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 suitability as renters.

Housing Authority of the City of Pittsburgh

- The HACP 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 (HAP) contract executed with the HACP
- Comply with all applicable fair housing laws and not discriminate against anyone
- Maintain the housing unit in accordance with Housing Quality National Standards for the Physical Inspection of Real Estate (NSPIRE) and make necessary repairs in a timely manner; and
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the lease.

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What Does the Family Do?

The family has the following responsibilities:

- Provide the HACP with complete and accurate information as determined by the HACP to be necessary for administration of the program
- Make their best and most timely efforts to locate qualified and suitable housing
- Attend all appointments scheduled by the HACP
- Allow the HACP 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
- Comply with the family obligations of the voucher
- Not commit serious or repeated violations of the lease
- Not engage in drug-related or violent criminal activity
- Notify the HACP and the owner before moving or terminating the lease
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any owner interest in the unit
- Promptly notify the HACP of any changes in family composition; and
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

1-II.D. APPLICABLE REGULATIONS

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 35: Lead-Based Paint
- 24 CFR Part 100: The Fair Housing Act
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Project-Based Vouchers
- 24 CFR Part 985: The Section 8 Management Assessment Program (SEMAP)

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PART III: THE HCV ADMINISTRATIVE PLAN

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

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

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

The HACP is responsible for complying with all changes in HUD regulations pertaining to the HCV program. If such changes conflict with this Administrative Plan, HUD regulations will control.

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

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

HUD regulations at 24 CFR 982.54 define the policies that must be included in the administrative plan. They are as follow:

- Selection and admission of applicants from the HACP waiting list, including any HACP admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the HACP waiting list (Chapter 4),
- Issuing or denying vouchers, including HACP Policy: governing the voucher term and any extensions of the voucher term. If the HACP decides to allow extensions of the voucher term, the HACP Administrative Plan must describe how the HACP determines whether to grant extensions, and how the HACP determines the length of any extension (Chapter 5),
- Any special rules for use of available funds when HUD provides funding to the HACP for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4),
- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12),

Housing Authority of the City of Pittsburgh

- 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, including policies on administering decreases in the payment standard during the HAP contract term (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 the HACP of amounts the family owes the HACP (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 or other authorized officials to charge the administrative fee reserve (Chapter 16)
 - Procedural guidelines and performance standards for conducting required HQS^{NSPIRE} inspections (Chapter 8); and
 - HACP screening of applicants for family behavior or suitability for tenancy (Chapter 3).
-
- Policies governing the project-basing of vouchers in both the standard Project-Based Voucher (PBV) program (Chapter 17) and the RAD Project-Based Voucher program (Chapter 18); and
 - Special policies governing any special purpose vouchers issued by the PHA (Chapter 19).

Mandatory vs. Discretionary Policy

HUD makes a distinction between:

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

HUD expects the HACP to adopt local policies and procedures that are consistent with mandatory policies in areas where HUD gives the HACP discretion. The HACP's Administrative Plan is the foundation of those policies and procedures. HUD's directions require HACP to make policy choices that provide sufficient guidance to staff and ensure consistency to program applicants and participants.

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

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1-III.C. ORGANIZATION OF THE ADMINISTRATIVE PLAN

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

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1-III.D. UPDATING AND REVISING THE ADMINISTRATIVE PLAN

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

HACP Policy:

The HACP may review and update the Administrative Plan once a year, and more often if needed, to reflect changes in regulations, HACP operations, or when needed to ensure staff consistency in operation.

Chapter 2

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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 the PHA's 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 the PHA regarding nondiscrimination.

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

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

PART I: NONDISCRIMINATION

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2-I.A. OVERVIEW

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

Housing Authority of the City of Pittsburgh

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012 and further clarified in Notice PIH 2014-20
- Violence Against Women Reauthorization Act of 2013 (VAWA)

When more than one civil rights law applies to a situation, the laws will be read and applied together.

Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted will also apply.

HACP Policy:

The HACP complies with the following laws:

California Fair Employment and Housing Act (FEHA)

Unruh Civil Rights Act

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2-I.B. NONDISCRIMINATION

Federal regulations prohibit discrimination against certain protected classes and other groups of people. State and local requirements, as well as PHA policies, can prohibit discrimination based on other factors.

The PHA shall not discriminate because of race, color, sex, religion, familial status, age, disability or national origin (called "protected classes")

Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

HACP Policy:

The HACP will not discriminate on the basis of: [FR Notice 02/03/12].

- Gender, Gender Identity, and Gender Expression
- Sexual Orientation
- Marital Status

Housing Authority of the City of Pittsburgh

- Ancestry
- Source of Income
- Genetic Information

California Supreme Court has held that protections under the Unruh Act are not necessarily restricted to these characteristics. The Unruh Act is meant to cover

all arbitrary and intentional discrimination by a business establishment on the bases of personal characteristics similar to those listed above.

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The HACP will not use any of these factors to:

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

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Providing Information to Families and Owners

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

contract.

2-I.C. DISCRIMINATION COMPLAINTS

General Housing Discrimination Complaints

If an applicant or participant believes that any family member has been discriminated against by the PHA ~~staff~~ or an owner, the family should advise the PHA. The PHA should make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action.

~~HACP.~~In all cases, the PHA will advise the family that they may file a fair housing complaint if the family feels they have been discriminated against under the Fair Housing Act.

HACP Policy:

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

Within 10 business days of receiving the complaint, the PHA will investigate and attempt to remedy discrimination complaints made against the PHA. The PHA will also advise the family of their right to file a fair housing complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The fair housing poster, posted in conspicuous and accessible locations in HACP lobby, will reference how to file a complaint with FHEO.

The PHA will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)

Complaints under the Equal Access Final Rule [Notice PIH 2014-20]

Notice PIH 2014-20 requires an articulated complaint process for allegations of discrimination under the Equal Access Final rule. The Equal Access Final Rule requires that PHAs provide equal access regardless of marital status, gender identity, or sexual orientation. The PHA will be informed on these obligations by the HUD Field Office or FHEO when an Equal Access complaint investigation begins.

HACP Policy

Applicants or tenant families who believe that they have been subject to unlawful discrimination based on marital status, gender identity, or sexual orientation under the Equal Access Rule may notify the HACP either orally or in writing.

Within 10 business days of receiving the complaint, the HACP will provide a written notice to those alleged to have violated the rule. The HACP will also send a written notice to the complainant informing them that notice was sent to those

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Housing Authority of the City of Pittsburgh

alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

The HACP will attempt to remedy discrimination complaints made against the PHA and will conduct an investigation into all allegations of discrimination.

Within 10 business days following the conclusion of the HACP's investigation, the HACP will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.

The HACP will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)

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VAWA Complaint Processing [Notice FHEO 2023-01]

A complainant may, not later than one year after an alleged VAWA violation has occurred or terminated, file a complaint with FHEO alleging such violation. If there is a violation that began prior to a year before the complaint is filed, but it continues into the one-year time period, HUD will accept the complaint. FHEO will investigate the complaint if it is timely and FHEO otherwise has jurisdiction. If a complaint is filed more than one year after the alleged violation occurred or terminated, FHEO may, but is not required to, investigate the allegations under the additional authority and procedures described in FHEO 2023-01.

Complaints do not need to allege a violation of the Fair Housing Act for FHEO to accept and investigate the complaint.

HACP Policy:

Applicants or tenant families who wish to file a VAWA complaint against the PHA may notify the HACP either orally or in writing.

The HACP will advise the family of their right to file a VAWA complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The HACP will inform the family that not later than one year after an alleged VAWA violation has occurred or terminated, applicants and tenants who believe they have been injured by a VAWA violation or will be injured by such a violation that is about to occur may file a VAWA complaint using FHEO's online complaint form via mail, email, or telephone.

The HACP will attempt to remedy complaints made against the HACP and will conduct an investigation into all allegations of discrimination.

The HACP will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)

Discrimination Complaints

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

Upon receipt of a housing discrimination complaint, the HACP is required to:

- Provide written notice of the complaint to those alleged and inform the complainant that such notice was made.
- Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective action is not warranted.
- Keep records of all complaints, investigations, notices, and corrective actions [Notice PIH 2014-20].

HACP Policy:

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

~~The HACP will attempt to remedy discrimination complaints made against the HACP and will conduct an investigation into all allegations of discrimination.~~

~~The HACP will provide a written notice to those alleged to have violated the rule. The HACP will also send a written notice to the complainant informing them that notice was sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).~~

~~Following the conclusion of the HACP's investigation, the HACP will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.~~

- ~~The HACP will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)~~

Additionally, the fair housing agency serving the City of Pittsburgh is:

Pacific Community Services, Inc.
329 Railroad Avenue, Pittsburgh, CA 94565
Phone: (925) 439-1056 or
Email: <http://www.pcsi.org/>

Email: <http://www.pcsi.org/>

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ECHO Housing

301 West 10th Street **Antioch, CA 94509**

Phone: 925-732-3919 or 510-485-9155

Email: <https://www.echofairhousing.org/tenantlandlord-services.html>

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A. OVERVIEW

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

The PHA must ensure that persons with disabilities have full access to the PHA programs and services. This responsibility begins with the first contact by an interested family and continues through every aspect of the program.

HACP Policy:

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

"If you or anyone in your family is a person with disabilities and you require a specific accommodation in order to fully utilize HACP's programs and services, please contact the HACP."

A specific name and phone number of designated HACP staff will be provided to process requests for accommodation.

The HACP will display posters and other housing information and signage in locations throughout the HACP's office in such a manner as to be easily readable from a wheelchair.

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

A reasonable accommodation is an adjustment made to a rule, policy, practice, or service that allows a person with a disability to have equal access to the HCV program. For example, reasonable accommodations may include making home visits, extending the voucher term, or approving an exception payment standard in order for a participant to lease an accessible dwelling unit.

Federal regulations stipulate that, requests for accommodations will be considered reasonable if they do not create an “undue financial and administrative burden” for the PHA 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.

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Types of Reasonable Accommodations

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When needed, the PHA 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 the PHA range) if the HACP 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 HACP staff.

2-II.C. REQUEST FOR AN ACCOMMODATION

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

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

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

HACP Policy:

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The **HACP** may encourage the family to make its request in writing using a **HACP** reasonable accommodation request form. However, the **HACP** will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted and regardless of whether the request is submitted on **HACP’s** Reasonable Accommodation form.

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

If the need for the accommodation is not readily apparent or known to the HACP, 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 request for a reasonable accommodation/reasonable modification need not use a specific written form and need not mention the Fair Housing Act, Section 504, or the ADA, or use the phrase "reasonable accommodation" or "reasonable modification." Requests for accommodation will be evaluated and decided upon by the Housing Manager and/or another staff member trained in and knowledgeable about fair housing and reasonable accommodations.

2-II.D. VERIFICATION OF DISABILITY

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

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

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

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

When verifying a disability, the PHA 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]

- The HACP must request only information that is necessary to evaluate the disability-related need for the accommodation. The HACP will not inquire about the nature or extent of any disability.
- Medical records **will not** be accepted or retained in the participant file.
- In the event that the HACP does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the HACP Staff will dispose of it. In place of the information, the HACP will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

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

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

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

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the overall size of the HACP's program with respect to the number of employees, type of facilities and size of budget, type of operation including composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

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

HACP Policy

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After a request for an accommodation is presented, the HACP will respond in writing within 15 business days.

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

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

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

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

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

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

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

2-II.G. PHYSICAL ACCESSIBILITY

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

- Notice PIH 2010-26
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990

- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

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

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

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

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

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

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

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

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

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

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

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

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2-III.A. OVERVIEW

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

The HACP will take affirmative steps to communicate with people who need services or information in a language other than English.

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

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

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2-III.B. ORAL INTERPRETATION

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The HACP will offer competent interpretation services free of charge, upon request, to the LEP person.

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

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

Where feasible and possible, according to its language assistance plan (LAP), the HACP will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents.

2-III.C. WRITTEN TRANSLATION

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

HACP Policy:

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

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

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

2-III.D. IMPLEMENTATION PLAN

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

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

HACP Policy:

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

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

See Exhibit 2-1

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

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

- Has a physical or mental impairment that substantially limits one or more of the

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major life activities of an individual; or

- Has a record of such impairment; or
- Is regarded as having such impairment.

The phrase “physical or mental impairment” includes:

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

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

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

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

The definition of a person with disabilities ***does not include:***

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

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

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Housing Authority of the City of Pittsburgh

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

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

Chapter 3

ELIGIBILITY

INTRODUCTION

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

To be eligible for the HCV program:

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

This chapter contains three parts:

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

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

Part III: Denial of Assistance. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the HACP to deny assistance as well as the asset limitation for HCV.

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PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

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

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3-I.B. FAMILY AND HOUSEHOLD [24 CFR 982.201(e); 5.403; FR Notice 02/03/12; Notice PIH 2014-20] and FR Notice 2/14/23]

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

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Family

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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 actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, ~~disabled person, near-elderly person, or any other single person,~~ displaced person, disabled person, near-elderly person, or any other single person; an otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or a 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 home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, ~~or~~ and the remaining member of a tenant family. The HACP has the discretion to determine if any other group of persons qualifies as a family.

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Gender Identity means actual or perceived gender characteristics.

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Sexual orientation means homosexuality, heterosexuality, or bisexuality.

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HACP Policy:

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

Each family must identify the individuals to be included in the family at the time of application and must notify the HACP if the family's composition changes.

Household

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

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

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Family Breakup [24 CFR 982.315; Notice PIH 2017-08]

Except under the following conditions, the HACP has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up:

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, ~~or~~ stalking or human trafficking, the HACP must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, and stalking and human trafficking, see section 16-IX. D of this plan.)
- In accordance with Notice PIH 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 or human trafficking, 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.
- If a court determines the disposition of property between members of the assisted family, the HACP is bound by the court's determination of which family members continue to receive assistance.

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HACP Policy:

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

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

In the absence of a judicial decision or an agreement among the original family members, the HACP will determine which family will retain their placement on the

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waiting list or continue to receive assistance. In making its determination, the HACP will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is the victim of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking,~~ including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals (6) any original remaining members that can qualify as head of household.

Remaining Member of a Tenant Family [24 CFR 5.403]

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

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

HACP Policy:

The disposition of a Housing Choice Voucher may be transferred to remaining family member(s) of a deceased participant under the following conditions:

- The remaining member named head of household must be 18 years of age or older and was previously listed on the HUD-50058.
- In the instance of an emancipated remaining family member, the emancipated remaining member shall have primary, legal custody of any remaining children (if applicable).
- A party, never having been included in the original family composition and who has gained primary, legal custody of the remaining children may become head of household, unless otherwise assisted or ineligible for the program.

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

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

HACP Policy:

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

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

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

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

HACP Policy:

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

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

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HACP Policy:

Minors who are emancipated under state law may be designated as a cohead. *Other adult* means a family member, other than the head, spouse, or cohead, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults.

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3-I.F. ~~DEPENDENT~~**DEPENDENTS AND MINORS** [24 CFR 5.603]

A *minor* is a member of the family, other than the head of family or spouse, who is under 18 years of age. 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, cohead, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a dependent allowance as described in Chapter 6.

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Joint Custody of Dependents

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HACP Policy:

HACP Policy:

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family ~~54~~**50**% percent or more of the time (**183 days** out of the year).

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

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

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

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

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

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Elderly Persons

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

Near-Elderly Persons

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

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Elderly Family

An *elderly family* is one in which the head, spouse, cohead, or sole member is an elderly person. Identifying elderly families is important because elderly families qualify for the elderly family allowance as described in Chapter 6.

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

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Persons with Disabilities

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or cohead is a person with disabilities. The technical

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definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

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

Disabled Family

A **disabled family** is one in which the head, spouse, or cohead is a person with disabilities. Identifying disabled families is important because these families qualify for the disabled family allowance as described in Chapter 6.

Even though persons with drug or alcohol dependencies are considered persons with disabilities, this does not prevent the HACP from denying assistance for reasons related to alcohol and drug abuse in accordance with the policies found in Part III of this chapter, or from terminating assistance in accordance with the policies in Chapter 12, Section I.E.

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

A **guest** is a person temporarily staying in the unit with the consent of a member of the household who has expressed or implied authority to so consent. The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near HACP premises [24CFR 5.100]

HACP Policy:

A **guest** is a person temporarily staying in the unit with the consent of a member of the household who has expressed or implied authority to so consent. The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near HACP premises [24CFR 5.100]

A guest can remain in the assisted unit no longer than **15** consecutive days or a total of **45** cumulative calendar days during any 12-month period.

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

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

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documentation of the residence to which the guest will return.

Participants cannot violate the terms of their lease if the lease is more restrictive than the Housing Authority's guest policies.

3-I.K. FOSTER CHILDREN AND FOSTER ADULTS [24 CFR 5.603]

A **foster adult** is a member of the household who is 18 years of age or older and meets the definition of a **foster adult** under state law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

A **foster child** is a member of the household who meets the definition of a **foster child** under state law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

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

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

Foster children and foster adults who are living with an applicant or who have been approved by the HACP to live with a participant family are considered household members but not family members. The income of foster children/adults is not counted in family annual income, and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603; HUD-50058 IB, p. 13].

HACP Policy:

HACP Policy:

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

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of **HQSNSPIRE** space standards according to 24 CFR 982.401 as described in Section 8-I.F. of this policy.

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

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3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

HACP Policy:

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

Absent Students

HACP Policy:

HACP Policy:

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

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

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

HACP Policy:

If a child has been placed in foster care, the HACP will verify with the appropriate agency whether or 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 Cohead

HACP Policy:

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

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

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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].

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HACP Policy:

The HACP will require verification of the family member's permanent absence from a responsible medical professional. If the responsible medical professional cannot provide a determination, the person will be considered temporarily absent. If the family certifies that the family member is confined on a permanent basis, they may present, and the HACP will consider, any additional documentation or evidence.

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

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Return of Permanently Absent Family Members

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HACP Policy:

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

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3-I.M. LIVE-IN AIDE

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A **live-in aide** is 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].

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

The income of a live-in aide is not counted in the calculation of annual income for the

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family [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. Because live-in aides are not *family* members, a relative who serves as a live-in aide would not be considered a remaining member of a tenant family.

HACP Policy:

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near elderly, or disabled family member. For continued approval, the family must submit a new, written request-subject to HACP verification-at each annual reexamination.

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.

All live-in aides will be subject to HACP's non-income related screening.

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

- 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 HACP or to another HACP in connection with Section 8 or public housing assistance under the 1837 Act.

The HACP will notify the family of its decision in writing within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request.

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PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

HUD establishes income limits for all areas of the country and publishes them annually in the *Federal Register*. They are based upon estimates of median family income with adjustments for family size. The income limits are used to determine eligibility for the program and for income targeting purposes as discussed in this section.

Definitions of the Income Limits [24 CFR 5.603(b)]

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

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

Extremely low-income family: A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families. 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] and Notice PIH 2023-27]

Income limits are used for eligibility only at admission. Income eligibility is determined by comparing the annual income of an applicant to the applicable income limit for their family size. Income and net family assets of household members are excluded when determining income eligibility; however, household members are considered for purposes of unit size and subsidy standards. In order to be income eligible, an applicant 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]

HACP Policy:

The HACP will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time, they were selected from the HACP's waiting list.

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

HUD permits the HACP to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the HACP 5 Year & Annual Plan and the County Consolidated plans for local governments within the HACP's jurisdiction.

HACP Policy:

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

Using Income Limits for Targeting [24 CFR 982.201]

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

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not counted for income targeting purposes.

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

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

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the HACP's LEP 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]

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

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U.S. Citizens and Nationals

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

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HACP Policy

Family members who declare citizenship or national status will not be required to provide additional documentation unless the HACP receives information indicating that an individual's declaration may not be accurate.

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Eligible Noncitizens

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

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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].

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Ineligible Noncitizens

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The HACP 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).

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

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Mixed Families

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

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

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

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HACP Policy:

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The HACP will not provide assistance to a family before the verification of at least one family member is a U.S. citizen, national, or noncitizen with eligible immigration status.

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

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

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

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

If an individual qualifies for a time extension for the submission of required documents, the HACP must grant such an extension for no more than 30 days [24 CFR 5.508(h)]. Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

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HACP Policy

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

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

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. If a child under age 6 has been added to an applicant family within 6 months prior to voucher issuance, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of the effective date of the initial HAP contract. A detailed discussion of acceptable documentation is provided in Chapter 7.

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

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

The HACP must deny assistance to an applicant family if they do not meet the SSN

disclosure and documentation requirements contained in 24 CFR 5.216.

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

HUD requires that each adult family member, and the head of household, spouse, or cohead, 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. The consent form remains effective until the family is denied assistance, assistance is terminated, or the family provides written notification to revoke consent.

The HACP must deny admission to the program if any member of the applicant family fails to sign and submit the consent forms for obtaining information in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3)]. and 24 CFR 5.232(a)]. However, this does not apply if the applicant or participant, or any member of their family, revokes their consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes a policy that revocation of consent to access financial records will result in denial or termination of assistance or admission [24 CFR 5.232(c)].

HACP Policy:

The HACP has established a policy that the family's revocation of consent to allow the HACP to access records from financial institutions will result in denial of admission.

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3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612, FR Notice 4/10/06, FR Notice 9/21/16]

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

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

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

Definitions

In determining whether and how the new eligibility restrictions apply to a student, the HACP will rely on the following definitions [FR Notice 4/10/06, FR Notice 9/21/16].

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

HACP Policy:

The HACP will consider a student “independent” from his or her parents and the parents’ income will not be considered when determining the student’s eligibility if the following four criteria are all met:

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

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

- The individual is at least 24 years old by December 31 of the award year for which aid is sought.
- The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older.
- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual’s state of legal residence.
- The individual is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes.
- The individual is a graduate or professional student.
- The individual is married.

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- The individual has one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent).
- The individual has been verified during the school year in which the
- application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by: A local educational agency homeless liaison.

The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director or a financial aid administrator.

- The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.
- The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.
- The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.
- If the HACP determines that an individual meets the definition of a *vulnerable youth* such a determination is all that is necessary to determine that the person is an *independent student* for the purposes of using only the student's income for determining eligibility for assistance.

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

Institution of Higher Education

The HACP 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

HACP Policy:

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

Person with Disabilities

The HACP will use the statutory definition under section 3(b)(3)(E) of the 1837 Act to determine whether a student is a *person with disabilities* (see Exhibit 3-1).

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Veteran

HACP Policy:

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

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Vulnerable Youth

HACP Policy:

A *vulnerable youth* is an individual who meets the U.S. Department of Education's definition of *independent student* in paragraphs (b), (c), or (h), as adopted in Section II of FR Notice 9/21/16:

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- The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older.
- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence.
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:
 - A local educational agency homeless liaison.
 - The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director
 - A financial aid administrator.

Determining Student Eligibility

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

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HACP Policy:

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

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

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

Determining Parental Income Eligibility

HACP Policy

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

- If the student's parents are married and living together, the HACP will obtain a joint income declaration and certification of joint income from the parents.
- If the student's parent is widowed or single, the HACP will obtain an income declaration and certification of income from that parent.
- If the student's parents are divorced or separated, the HACP 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, the HACP 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. The HACP 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, the HACP will use the income limits for the jurisdiction in which the parents live.

3-II.F. EIV SYSTEM SEARCHES [EIV FAQs; EIV System Training 9/30/20; and Notice PIH 2023-27]

Existing Tenant Search

Prior to admission to the program, the HACP must search for all household members using the EIV Existing Tenant Search module. The HACP must review the reports for any SSA matches involving another HACP or a multifamily entity and follow up on any issues identified. The HACP must provide the family with a copy of the Existing Tenant Search results if requested. At no time may any family member receive duplicative

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assistance.

If the tenant is a new admission to the HACP, and a match is identified at a multifamily property, the HACP must report the program admission date to the multifamily property and document the notification in the tenant file. The family must provide documentation of move-out from the assisted unit, as applicable.

HACP Policy:

The HACP will contact the other PHA or owner identified in the report to confirm that the family has moved out of the unit and obtain documentation of current tenancy status, including a form HUD-50058 or 50059, as applicable, showing an end of participation. The HACP will only approve assistance contingent upon the move-out from the currently occupied assisted unit.

Debts Owed to PHAs and Terminations

All adult household members must sign the form HUD-52675 Debts Owed to Public Housing and Terminations. Prior to admission to the program, the PHA must search for each adult family member in the Debts Owed to PHAs and Terminations module. If a current or former tenant disputes the information in the module, the tenant should contact the PHA directly in writing to dispute the information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will update or delete the record from EIV. Former tenants may dispute debt and termination information for a period of up to three years from the end of participation date in the program.

HACP Policy:

The HACP will require each adult household member to sign the form HUD-52675 once at the eligibility determination. Any new members added to the household after admission will be required to sign the form HUD-52675 prior to being added to the household.

The HACP will search the Debts Owed to PHAs and Terminations module as part of the eligibility determination for new households and as part of the screening process for any household members added after the household is admitted to the program. If any information on debts or terminations is returned by the search, the HACP will determine if this information warrants a denial in accordance with the policies in Part III of this chapter.

Income and Income Validation Tool (IVT) Reports

For each new admission, the PHA is required to review the EIV Income and IVT Reports to confirm and validate family reported income within 120 days of the IMS/PIC submission date of the new admission. The HACP must print and maintain copies of the EIV Income and IVT reports in the tenant file and resolve any discrepancies with the family within 60 days of the EIV Income or IVT report dates.

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PART III: DENIAL OF ASSISTANCE

3-III.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. A PHA may deny assistance for an applicant because of the family's action or failure to act as described in 24 CFR 982.552 or 982.553. This section will discuss other situations and circumstances in which denial of assistance is mandatory for the HACP and those in which denial of assistance is optional for the HACP.

While the regulations state that the PHA must prohibit admission for certain types of criminal activity and give the PHA the option to deny for other types of previous criminal history, more recent HUD rules and OGC guidance must also be taken into consideration when determining whether a particular individual's criminal history merits denial of admission.

When considering any denial of admission, PHAs may not use arrest records as the basis for the denial. Further, HUD does not require the adoption of "One Strike" policies and reminds PHAs of their obligation to safeguard the due process rights of applicants and tenants [Notice PIH 2015-18].

HUD's Office of General Counsel issued a memo on April 4, 2016, regarding the application of Fair Housing Act standards to the use of criminal records. This memo states that a PHA violates the Fair Housing Act when their policy or practice has an unjustified discriminatory effect, even when the PHA had no intention to discriminate. Where a policy or practice that restricts admission based on criminal history has a disparate impact on a particular race, national origin, or other protected class, that policy or practice is in violation of the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the PHA, or if that interest could be served by another practice that has a less discriminatory effect [OGC Memo 4/4/16]. HUD codified this stance on disparate impact and discriminatory effects in a final rule dated March 31, 2023. In doing so, HUD also standardized its long-practiced three-step approach to assessing burdens of proof.

PHAs who impose blanket prohibitions on any person with any conviction record, no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then will be unable to show that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even a PHA with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary. To do this, the PHA must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and property.

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

Denial of assistance includes any of the following:

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

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

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

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

3-III.B. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.553(a)] and 24 CFR 982.552(b)(6)]

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

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

HACP Policy:

The HACP will admit an otherwise-eligible family who was evicted from federally

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assisted housing within the past 3 (Three) years for drug-related criminal activity, if the HACP is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the HACP or the person who committed the crime, is no longer living in the household.

- The HACP makes the determination whether a household member is currently engaged in the use of illegal drugs.

HACP Policy:

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

- The HACP 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.

HACP Policy:

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

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.
- Any member of the family fails to sign and submit consent forms for obtaining information.
- The family does not meet the restrictions on net assets and real property ownership as required by 24 CFR 5.618.

3-III.C. RESTRICTION ON ASSISTANCE BASED ON ASSETS [24 CFR 5.618]

There are two circumstances under which a family is ineligible to receive assistance based on asset ownership.

- First, assistance may not be provided to any family if the family's net assets exceed \$100,000 (adjusted annually by HUD).
- Second, the family has real property that is suitable for occupancy by the family as a residence and the family has:

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- A present ownership interest in the real property; and
- A legal right to reside in the real property; and
- The effective legal authority to sell (based on state or local laws of the jurisdiction where the property is located) the real property.

However, the real property restriction does not apply in the following circumstances:

- Any property for which the family is receiving assistance for a manufactured home under 24 CFR 982.620 or under the HCV Homeownership program;
- Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property;
- Any family that is offering the property for sale; or
- Any person who is a victim of domestic violence, dating violence, sexual assault, or stalking.
- When a family asks for an exception because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA must comply with all the confidentiality requirements under VAWA. The PHA must accept a self-certification from the family member, and the restrictions on requesting documentation under VAWA apply.

A property is considered *suitable for occupancy* unless the family demonstrates that it:

- Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
- Is not sufficient for the size of the family,

HACP Policy:

The HACP defines *not sufficient for the size of the family* as being overcrowded based on space standards in Chapter 8 of this policy.

- Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA or owner
- Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or
- Is not a property that a family may reside in under the state or local laws of the jurisdiction where the property is located.

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

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

Criminal Activity [24 CFR 982.553]

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

HACP Policy:

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

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

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

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

Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse; or

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

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

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

- Any **conviction for drug-related or violent criminal activity** within the past **5 years**.
- Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 5 years.

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

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

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

HUD authorizes the HACP to deny assistance based on the family's previous behavior in assisted housing. Per the alternative requirements listed in the *Federal Register* notice dated December 29, 2014:

PHAs are no longer permitted to deny assistance to a family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program [FR Notice 12/29/14].

HACP Policy:

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

- The family does not provide information that the HACP or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to the HACP.
- Any family member has been evicted from federally assisted housing in the last five years.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family owes rent or other amounts to any HACP in connection with Section 8 or other public housing assistance under the 1937 Act 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 HACP for amounts the HACP 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 HACP, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.
- **A family member has engaged in or threatened violent or abusive behavior toward HACP personnel.**
 - ***Abusive or violent behavior towards HACP personnel*** includes verbal as well as physical abuse or violence.

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Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

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

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

3-III.DE. 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 the HACP in complying with HUD requirements and HACP policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records the HACP must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

- The HACP will perform a criminal background check through a third-party vendor or for every adult household member.

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

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)].

HACP Policy:

The HACP will use the third-party vendor or Dru Sjodin National Sex Offender database to screen applicants for admission. Additionally, PHAs must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime registered sex offender registration requirement in any state [Notice PIH 2012-28].

If the HACP proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the HACP must notify the household of the proposed

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action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission. [24 CFR 5.903(f) and 5.905(d)].

Screening for Suitability as a Tenant [24 CFR 982.307]

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

HACP Policy:

The HACP will not conduct additional screening to determine an applicant family's suitability for tenancy.

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

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

The HACP may not disclose to the owner any confidential information provided to the HACP by the family in response to a HACP request for documentation of domestic violence, dating violence, sexual assault, ~~or~~ stalking or human trafficking except at the written request or with the written consent of the individual providing the documentation [see 24 CFR 5.2007(a)(4)].

HACP Policy:

The HACP will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of the initial HQSNSPIRE inspection or before. The HACP will not provide any additional information to the owner, such as tenancy history or criminal history, etc.

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

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HACP Policy::

HACP Policy:

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

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

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

HUD authorizes the HACP 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 mandatory (see Section 3-III.B).

HACP Policy:

The HACP will consider the following facts and circumstances prior to making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents' safety or property
- The effects that denial of assistance may have on other members of the family who were not involved in the action or failure to act
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.G) a victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking or human trafficking.
- The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future

While a record of arrest(s) will not be used as the sole basis for denial, an arrest may, however, trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, the HACP may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The HACP may also consider:

- Any statements made by witnesses or the applicant not included in the police report
- Whether criminal charges were filed
- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
- Any other evidence relevant to determining whether or not the

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applicant engaged in disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property

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

*The HACP 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

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Should the HACP's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, the HACP must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the HACP must deny admission to the family [Notice PIH 2012-28].

For other criminal activity, the HACP may permit the family to exclude the culpable family members as a condition of eligibility. [24 CFR 982.552(c)(2)(ii)].

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HACP Policy:

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

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

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

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

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HACP Policy:

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, the HACP will determine whether the behavior is related to the stated disability. If so, upon the family's request, the HACP will determine whether admitting the family as a reasonable

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accommodation is appropriate. The HACP will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

3-III.**FG**. NOTICE OF ELIGIBILITY OR DENIAL

If the family is eligible for assistance, the HACP will notify the family in writing and schedule a tenant briefing, as discussed in Chapter 5.

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

HACP Policy:

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

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

HACP Policy:

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

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

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

3-III.GH. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, ~~AND~~ STALKING AND HUMAN TRAFFICKING

The Violence against Women Act ~~of 2013~~ (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit PHAs from denying an applicant admission to the HCV program on the basis or as a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant otherwise qualifies for assistance or admission.

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

Definitions of key terms used in VAWA are provided in section 16-IX of this plan, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

Notification

~~VAWA 2013 expanded notification requirements to include the obligation for~~VAWA requires PHAs to provide applicants who are denied assistance with a VAWA Notice of Occupancy Rights (form HUD-5380) and a domestic violence certification form (HUD-5382) at the time the applicant is denied.

HACP Policy:

HACP Policy:

The HACP acknowledges that a victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking or human trafficking may have an unfavorable history (e.g., a poor credit history, poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under the HACP's policies.

While the HACP is not required to identify whether adverse factors that resulted in the applicant's denial are a result of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking the applicant may inform the HACP that

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their status as a victim is directly related to the grounds for the denial. The HACP will request that the applicant provide enough information to the HACP to allow the HACP to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of his or her status as a victim.

The HACP will include in its notice of denial the VAWA information described in section 16-IX.C of this plan as well as including a copy of the form HUD-5382. The HACP will request in writing that an applicant wishing to claim protection under VAWA notify the HACP within 14 business days of making the request.

Documentation

Victim Documentation [24 CFR 5.2007]

HACP Policy:

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault ~~or~~₁ stalking, or human trafficking the HACP will request in writing that the applicant provide documentation supporting the claim in accordance with section 16-IX.D of this plan.

Perpetrator Documentation

HACP Policy:

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

- A signed statement: (1) requesting that the perpetrator be removed from the application; and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit.
- Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

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EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

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

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:
Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time

- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

(A) In General

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

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

(B) Infants and Young Children

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

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

conditions arising from the etiological agent for AIDS are not excluded from this definition.

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

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

Individual with Handicaps [24 CFR 8.3]

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

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

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

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

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

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

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

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

- (a) Definition of institution of higher education for purposes of student assistance programs
- (1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term "institution of higher education" for purposes of subchapter

IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

- (A) A proprietary institution of higher education (as defined in subsection (b) of this section),
 - (B) A postsecondary vocational institution (as defined in subsection (c) of this section); and
 - (C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.
- (2) Institutions outside the United States
- (A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—
 - (i) In the case of a graduate medical school located outside the United States—
 - (I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and
 - (bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or
 - (II) The institution has a clinical training program that was approved by a state as of January 1, 1892; or
 - (ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.

(B) Advisory panel

- (i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
 - (I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and
 - (II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.
- (ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.

(C) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

- (A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title,
- (B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

- (C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an Associate's Degree or a postsecondary diploma, respectively; or
- (D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an Associate degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.
- (4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
- (A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1898, and December 1, 1898; or
- (B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.
- (5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.
- (6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

- (1) Principal criteria. For the purpose of this section, the term “proprietary institution of higher education” means a school that—
 - (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation,
 - (B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title,
 - (C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title,
 - (D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter,
 - (E) Has been in existence for at least 2 years; and
 - (F) Has at least 10 percent of the school’s revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.
- (2) Additional institutions. The term “proprietary institution of higher education” also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular student persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

- (1) Principal criteria: For the purpose of this section, the term “postsecondary vocational institution” means a school that—
 - (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation,
 - (B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and
 - (C) Has been in existence for at least 2 years.
- (2) Additional institutions. The term “postsecondary vocational institution” also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular student persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

Chapter 4

APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

When a family wishes to receive assistance under the HCV program, the family must submit an application that provides the HACP with the information needed to determine the family's eligibility. HUD requires the HACP to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, the HACP must select families from the waiting list in accordance with HUD requirements and HACP policies as stated in the administrative plan and the annual plan.

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

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

This chapter describes HUD and HACP 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 section discusses how applicants can obtain and submit applications and provides an overview of the application process because demand for housing far exceeds available funding, HACP will only provide HCV assistance to eligible families on its wait list, with the exception of families transferring into the program through portability. The HACP will utilize a lottery to place applicants on the wait list. A lottery ensures that all applicants who express a need for assistance are given an equal opportunity to apply for and receive a voucher. d.

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

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

PART I: THE APPLICATION PROCESS

4-I.A. OVERVIEW

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

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

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

HACP Policy:

Because demand for housing far exceeds available funding, the **HACP** will only provide HCV assistance to eligible families on its wait list, with the exception of families transferring into the program through portability. All persons who wish to apply for the HACP's programs must submit a pre-application via on-line, **during the time the HACP is accepting applications**. All applicants on an existing wait list will be served or withdraw prior to families being invited to apply to a new wait list.

The HACP will utilize a lottery to place applicants on the wait list. A lottery ensures that all applicants who express a need for assistance are given an equal opportunity to apply for and receive a voucher. Lottery applicants will only be required to provide information needed to make an initial assessment of the family's eligibility and to determine the family's placement on the waiting list. This is known as the "pre-application." This information will not be verified for waiting list placement.

The application process will involve two phases. The first phase is the pre-application, also sometimes referred to as the initial application. Completion of the on-line pre-application allows entry into the random lottery drawing.

Once the applications are randomly selected via lottery, they are placed on the waiting list **according to the preferences** indicated on the application. Applications not drawn in the lottery will not be placed on the waiting list.

The second phase is the "pre-determination of eligibility" (referred to as the full application). The full application takes place when the family reaches the top of the waiting list. At this time, the HACP will ensure that verification of all eligibility factors is current in order to determine the family's eligibility prior to the

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issuance of a voucher.

The family will be required to provide all of the information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list. This information will be verified. If it is determined that the family intentionally misrepresented the facts on the pre-application, the family will either be placed back on the wait list (ranked by their current preferences) or will be denied assistance. If the family is unable to verify their declared preferences, the family will be denied those preferences and will be placed back on the waiting list ranked by their verified preferences.

The full application is signed at the eligibility appointment by the applicant unless a disability prevents the applicant from doing so. In the case of a disability that prevents the applicant from signing the full application, HACP representative may sign as a witness. Applicants will then be interviewed by HACP staff to review the information on the full application form. Verification of the disability, as defined by the Americans with Disabilities Act, will be requested at this time. The full application process will include discussion about reasonable accommodation necessity.

Special Admission (Non-Waiting List)

If a family is displaced due to acquisition by the City of Pittsburgh, the HACP will determine eligibility for voucher issuance by the following criteria:

- The family must be income eligible and be a citizen or a non-citizen who has eligible immigration status in accordance with 24 CFR Part 5.
- If funding is available.
- No family members may have engaged in drug related activity or violent criminal activity within the 3 years from admission date.
- No family member can be a registered sex offender.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

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

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

Limited English Proficiency

PHAs are required to take reasonable steps to ensure equal access to their programs and activities by persons with limited English proficiency [24 CFR 1]. Chapter 2 provides a full discussion on the policies related to ensuring access to people with limited English

proficiency.

4-I.D. PLACEMENT ON THE WAITING LIST

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

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

Ineligible for Placement on the Waiting List

HACP Policy:

The HACP will conduct a lottery of all families and individuals who have turned in applications during the application period. Only applicants selected in the lottery will be placed on the wait list. Those not selected will receive a written notice informing them that they were not selected for the wait list.

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

Eligible for Placement on the Waiting List

HACP Policy:

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

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

Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and their score when the application is received by the HACP.

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PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

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

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

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

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

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

- Name and social security number of the head of household,
- Family unit size and number of family members,
- Amount of annual income,
- Any accessibility needs,
- Any translation/interpretation needs,
- Wait list opening date,
- Qualification for any local preference,
- Racial or ethnic designation of the head of household,
- Postal mailing address,
- Date and time of application,

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

HACP Policy:

The HACP will maintain a single waiting list for the HCV program and in the future, a separate list for some PBV sites.

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 the HACP operates if

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- 1) the other programs' waiting lists are open, and
- 2) the family is qualified for the other programs.

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

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

HACP Policy:

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

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

Closing the Waiting List

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

HACP Policy:

Due to the overwhelming interest in housing assistance when the wait list is open, the HACP will accept applications for no more than one week at a time. Where the HACP has particular preferences or funding criteria that require a specific category of family, the HACP may elect to continue to accept applications from these applicants while closing the waiting list to others. The HACP will announce the closing of the waiting list by closing the electronic portal public notice through the City of Pittsburgh Website. The waiting list may not be closed if it would have a discriminatory effect inconsistent with applicable civil rights laws.

In the future, HACP will close the waiting list at the end of the advertised open period. After 24 months, the wait list will be purged of all remaining applicants and a denial letter sent to them. A new wait list will be created thereafter for the next 24 months. Where HACP as particular preferences or funding criteria that require a specific category of family, HACP may elect to continue to accept applications from these applicants while closing the waiting list to others.

In the event that HACP is placed in a Shortfall protocol by HUD during the 24-month active wait list period, the time clock on the 24 months will be suspended (Tolled) for the number of days the wait list is in shortfall in order to provide all applicants the stated 24-Month waiting period in anticipation of a Housing Choice Voucher.

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Reopening the Waiting List

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

HACP Policy

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

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

- Public Notice – East County Times
- City of Pittsburgh Website
- City's Facebook page

HACP may develop informational materials and flyers to distribute to public and private agencies that serve low-income ~~persons~~people and may also make presentations to such organizations. HACP may provide instructions regarding the application process to other agencies that serve low-income clients and also may develop partnerships with such organizations, particularly those that serve persons with disabilities or LEP persons.

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

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

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

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

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

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

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

HACP Policy:

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

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4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

HACP Policy:

While the family is on the waiting list, the family must immediately inform the HACP of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted through the HACP Applicant Portal or in writing. Mail sent from the HACP to an applicant **will not** be forwarded. Mail sent from the HACP to an applicant is considered received unless returned by the post office as undeliverable. Mail returned to the HACP will result in the removal of an application from the waiting list unless it is the result of postal service error.

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Documentation of a postal service error is the responsibility of the applicant and must include a letter from the postmaster explaining the error which caused the applicant's mail to be returned to the HACP. Documentation must be received within **15 business days** from when the application was removed from the waiting list. Applicants providing acceptable documentation will be returned to the waiting list with their original application position.

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

HUD requires the HACP to establish policies to use when removing applicant names from the waiting list. Since the wait list will only be active for 24 months, it is unlikely that it will need to be updated. However, if the HACP must update the wait list for any reason, the following guidelines will be followed:

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 HACP request for information or updates, and the HACP determines that the family did not respond because of the family member's disability, the HACP must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c)(2)].

HACP Policy:

The waiting list may be updated as needed if funding is available to ensure that all applicants and applicant information is current and timely.

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

The family's response must be in writing and may be delivered in person, by mail, or by fax. Responses should be postmarked or received by the HACP not later than 30 calendar days from the date of the HACP letter.

If the family fails to respond within 30 calendar days, the family will be removed from the waiting list without further notice. If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 10 business days to respond from the date the letter was re-sent.

If a family is removed from the waiting list for failure to respond, the HACP may reinstate the family if it is determined that the lack of response was due to HACP error, or to circumstances beyond the family's control: as a result of a family member's disability, or as a direct result of status as a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, including an adverse factor resulting from such abuse.

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Removal from the Waiting List

HACP Policy:

HACP will remove applicants from the waiting list if they have requested that their name be removed in writing, in person or by email. In such cases no informal hearing is required.

If at any time, the HACP determines an applicant family on the waiting list is not eligible for assistance (see Chapter 3), the family will be removed from the waiting list. A notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the

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reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding the HACP's decision (see Chapter 16) [24 CFR 982.201(f)].

In the future, the **HCV wait list will terminate after 24 months** from the date it notified applicants of their initial placement on the wait list. A new HCV wait list will be created thereafter.

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Families removed from the waitlist due to failure to respond to updates or an invitation for certification will be considered for reinstatement to the waiting list for up to 12 months from the date they were removed from the waiting list or the expiration of the waiting list, whichever is earlier.

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PART III: SELECTION FOR HCV ASSISTANCE

4-III.A. OVERVIEW

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

The order in which families are selected from the waiting list depends on the selection method chosen by the HACP and is impacted in part by any selection preferences for which the family qualifies. The availability of targeted funding also may affect the order in which families are selected from the waiting list.

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

4-III.B. SELECTION AND HCV FUNDING SOURCES

Special Admissions [24 CFR 982.203]

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

HACP administers the following Special Purpose funding:

- Veterans Administration Supportive Housing Program (VASH). ***Admissions are accepted at 80% of the Area Median Income (Low Income) limit.***

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Special (non-waitlist) Admissions include the following:

- In-Place households for newly authorized PBV projects
- Direct Referrals from:
 - VASH or affiliated Veterans Support Agency and
 - Coordinated Entry System (CES) for an authorized PBV Project

Targeted Funding [24 CFR 982.204(e)]

HUD may award a HACP funding for a specified category of families on the waiting list. The HACP must use this funding only to assist the families within the specified category. In order to assist families within a targeted funding category, the HACP may skip families that do not qualify within the targeted funding category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

HACP Policy:

The HACP currently does not administer any type of targeted funding.

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Regular HCV Funding

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

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4-III.C. SELECTION METHOD

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

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

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

HACP Policy:

The HACP will use the following local preferences:

1. Pittsburgh residents.
- Any household family member who lives, works, or has been hired to work, or attending school in Pittsburgh.
2. Veterans or surviving spouses of veterans.

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Housing Authority of the City of Pittsburgh

3. The HACP will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding.

*The HACP will first assist families that have been terminated from the HCV program due to insufficient funding.

Local preferences in addition to lottery number or scoring of application are given priority when determining an applicant's order of a placement on the waiting lists. The following chart represents the order of preference given to applicants on the waiting lists:

CODE	RANK - DESCRIPTION	PREFERENCE POINTS
1	TERMINATED CLIENTS – Due to Insufficient Funding	150
2	VETERAN / RESIDENT	100
3	Employed / RESIDENT	20
4	VETERAN / NON-RESIDENT	3
5	NON-VETERAN /NON-RESIDENT	0

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

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

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

HACP Policy:

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

If the family's verified annual income, at final eligibility determination, does not fall under the Extremely Low-Income Limit and the family was selected for income targeting purposes, ahead of families with a higher preference, the family will be returned to the waiting list based on their actual income level and preference.

Order of Selection

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

HACP Policy:

All applications received within the application window will be accepted and entered into the applicant pool. The applicant pool will be screened for duplicate applications. Only one application will be allowed per Head of Household. Applicants will be randomly selected for the wait list by computer-generated lottery. All applicants in the pool will be randomly assigned a scoring number.

Families will be selected for the waiting list based on preference points and scoring number from the lowest to the highest number until HACP has reached number 1,200. If HACP issues all 1,200 vouchers over the next 24 months, the waiting list will be re-opened. If not, after 24 months from the date of notification to families of their placement on the wait list, the remaining applicants not selected will be denied and a new application process will be implemented. HACP plans to open the HCV wait list every two years.

No other applicant may be placed on the list. All other applicants will have to reapply in the future. Families will be selected from the waiting list based on the targeted funding or selection preference(s) for which they qualify, and in accordance with the HACP's hierarchy of preferences, if applicable. Within each targeted funding or preference category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the HACP. Documentation will be maintained by the HACP as to whether families on the list qualify for and are interested in targeted funding. If a higher placed family on the waiting list is not qualified or not interested in targeted funding, there will be a notation maintained so that the HACP does not have to ask higher placed families each time targeted selections are made.

4-III.D. NOTIFICATION OF SELECTION

When a family has been selected from the waiting list, the HACP must notify the family [24 CFR 982.554(a)].

HACP Policy:

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

- Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview.

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- Who is required to attend the application verification interview?
- All documents that must be provided at the interview, including information about what constitutes acceptable documentation.

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

4-III.E. THE APPLICATION INTERVIEW

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

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the HACP determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the HACP [Notice PIH 2012-10].

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

HACP Policy:

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

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

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

Pending disclosure and documentation of social security numbers, the HACP will allow the family to retain its place on the waiting list for **90 days from the date of the request**. If all household members have not disclosed their SSNs at the next time the HACP is issuing vouchers, the HACP will issue a voucher to the next eligible applicant family on the waiting list.

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

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documentation. If any materials are missing, the HACP will provide the family with a written list of items that must be submitted.

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

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

Interviews will be conducted in English. For LEP applicants, the HACP will provide translation services in accordance with the HACP's LEP plan.

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

4-III.F. COMPLETING THE APPLICATION PROCESS

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

HACP Policy:

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

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

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

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Chapter 5.

Chapter 5

BRIEFINGS AND VOUCHER ISSUANCE

INTRODUCTION

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, the HACP must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing the HUD-required documents and other information the family needs to know in order to lease a unit under the program. Once the family is fully informed of the program's requirements, the HACP issues the family a voucher. The voucher includes the unit size for which the family qualifies based on the HACP's subsidy standards, as well as the issue and expiration date of the voucher. The voucher is the document that authorizes 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 HACP policies related to these topics in two parts:

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

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

PART I: BRIEFINGS AND FAMILY OBLIGATIONS

5-I.A. OVERVIEW

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

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

The HACP must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed

individually or in groups. At the briefing, the HACP must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1873) and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

HACP Policy:

Briefings may be conducted in group meetings or individually. All briefings may be conducted in person, **remotely, by teleconference or, as a last resort an alternative, telephonically.**

Generally, the head of household is required to attend the briefing. If the head of household is unable to attend, the HACP may approve another adult family member to attend the briefing.

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

Briefings will be conducted in English. For LEP applicants, the HACP will provide translation services in accordance with the HACP's LEP plan (See Chapter 2).

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Remote Briefings [Notice PIH 2020-32]

Remote briefings may be conducted over the phone, via video conferencing, or through other virtual platforms.

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HACP Policy:

The HACP has the sole discretion to require that briefings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster. If the HACP schedules a remote briefing, the HACP will conduct a face-to-face briefing upon request of the applicant as a reasonable accommodation for a person with a disability if safety and health concerns can be reasonably addressed.

In addition, the HACP will conduct a briefing remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have childcare or transportation that would enable them to attend the briefing, or if the applicant believes an in-person briefing would create an undue health risk. The PHA will consider other reasonable requests for a remote briefing on a case-by-case basis.

Accessibility Requirements for Persons with Disabilities and LEP Individuals

As with in-person briefings, the platform for conducting remote briefings must be accessible and the briefing conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility.

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accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual.

If no method of conducting a remote briefing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual their inability to participate in the remote briefing, and the PHA should consider whether postponing the remote briefing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances. Limited English Proficiency (LEP) requirements also apply to remote briefings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote briefings.

Conducting Remote Briefings

The PHA must ensure that the lack of technology or inability to use technology for remote briefings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA must ensure that the family has appropriate technological access in order to fully participate in the remote briefing.

HACP Policy:

At least **10 business days** prior to scheduling the remote briefing, the HACP will provide written notification via first class mail and/or email to families participating in the briefing to advise of technological requirements and to request the family notify the HACP of any known barriers. If any family does not respond within five business days, or if the written notification is returned by the post office or the email is rejected, the HACP will contact the family by telephone to identify potential technological barriers and to determine which technology resources are accessible to the family. The PHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person briefing or have a one-on-one briefing over the phone, as appropriate.

The HACP will conduct remote briefings via a video conferencing platform when available. If applicants are unable to adequately access the video conferencing platform, the briefing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in, the remote briefing will be postponed, and an in-person alternative or one-on-one briefing over the phone will be provided.

The HACP will provide login information and/or conferencing call-in information and an electronic copy of the briefing packet via email at least **5 business days** before the briefing. The HACP will provide a paper copy of the briefing packet

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upon family request and may reschedule the briefing to allow adequate time for the family to receive the physical briefing packet.

The HACP will ensure that all electronic information stored or transmitted as part of the briefing meets the requirements for accessibility for persons with disabilities and persons with LEP, and is secure, including ensuring personally identifiable information (PII) is protected.

The HACP will ensure that families who participate in remote briefings have the opportunity to ask questions as part of the briefing.

If families lose connectivity during any remote briefing or otherwise feel they were unable to access information presented during the briefing, the family may request a one-on-one briefing over the phone or in person with the HACP.

Notification and Attendance

HACP Policy:

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

If the notice is returned by the post office with no forwarding address, the applicant will be denied, and their name **will not** be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated.

Applicants who fail to attend a scheduled briefing will be scheduled for another briefing automatically. The HACP will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without prior HACP approval, will be denied assistance (see Chapter 3).

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Oral Briefing [24 CFR 982.301(a)]

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works,
- Family and owner responsibilities,
- Where the family can lease a unit, including renting a unit inside or outside the HACP's jurisdiction,
- An explanation of how portability works. The HACP may not discourage the family from choosing to live anywhere in the HACP jurisdiction or outside the HACP jurisdiction under portability, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order,

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- The HACP must inform the family of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance,
- The advantages of areas that do not have a high concentration of low-income families; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

Briefing Packet [24 CFR 982.301(b)]

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

- The term of the voucher, voucher suspensions, and the HACP's policies on any extensions of the term. If the HACP allows extensions, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how the HACP determines the payment standard for a family, how the HACP determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how the HACP determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit and an explanation of how portability works, including information on how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process that may affect the family's assistance.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy.
- A statement of the HACP Policy: on providing information about families to prospective owners.
- The HACP subsidy standards including when and how exceptions are made.
- Materials (e.g., brochures) on how to select a unit and any additional information on selecting a unit that HUD provides.
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.
- A list of landlords known to the HACP who may be willing to lease a unit to the family or other resources (e.g., newspapers, organizations, online search tools) known to the HACP that may assist the family in locating a unit. HACPs must

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ensure that the list of landlords or other resources covers areas outside of poverty or minority concentration.

- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the HACP.
- The family obligations under the program, including any obligations of a welfare-to-work family.
- The grounds on which the HACP may terminate assistance for a participant family because of family action or failure to act.
- HACP informal hearing procedures including when the HACP is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.
- An explanation of the advantages of moving to an area that does not have a high concentration of low-income families.
- The HUD pamphlet on lead-based paint entitled, "Protect Your Family from Lead in Your Home."

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

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

Additional Items to Be Included in the Briefing Packet

In addition to items required by the regulations, HACPs may wish to include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7, Notice PIH ~~2010-18~~**2017-12**].

HACP Policy:

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

- Information on how to fill out and file a housing discrimination complaint form.
- The form HUD-5380 domestic violence certification form and the form HUD-5382 notice of occupancy rights, which contains information on VAWA protections for victims of domestic violence, dating violence, sexual assault, and stalking
- "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse

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- “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-18

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5-I.C. FAMILY OBLIGATIONS

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

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Time Frames for Reporting Changes Required By Family Obligations

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HACP Policy:

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

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

Family Obligations [24 CFR 982.551]

The family obligations of the voucher are listed as follows:

- The family must supply any information that the HACP 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 the HACP 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 HQS breach by the family deficiencies under the National Standards for the Physical Inspection of Real Estate (NSPIRE) caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normalordinary wear and tear caused by any member of the household or guest.

HACP Policy:

- The family must not damage the unit or premises (other than ordinary wear and tear) or permit any guest to damage the unit or premises. Damages beyond ~~normal~~ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.
- The family must allow the HACP 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.

HACP Policy:

The HACP 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, police reports, and affidavits from the owner, neighbors, or other credible parties with direct knowledge.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, ~~or~~ stalking or human trafficking will not be construed as serious or repeated lease violations by the victim [see 24 CFR 5.2005(c)(1)].

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

HACP Policy:

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

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

HACP Policy:

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

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

HACP Policy:

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

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

HACP Policy:

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

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and HACP 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 HACP 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.

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- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the HACP has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE

5-II.A. OVERVIEW

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

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

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

The following requirements apply when the HACP 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 the HACP 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 the HACP subsidy standards.

HACP Policy:

The HACP will assign ***one bedroom to the Head of Household*** and, if present, their spouse or companion. ***One additional bedroom will be assigned for every two other persons*** in the household. The living room is considered an additional sleeping room but is not used to determine the voucher size for the family. The Living Room is also considered an additional sleeping room when determining whether an additional adult can be added to the household. Foster children in the household will be included in determining unit size. Single person families will be allocated one bedroom (as opposed to a studio). See section 11.II.B below. Each two persons within the household, except in the following circumstances:

Live-in aides will be allocated a separate bedroom. No additional bedrooms will be provided for the attendant's family

Single person families will be allocated one bedroom.

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

Voucher Size	Persons in Household (Minimum – Maximum)
1 Bedroom	1-4
2 Bedrooms	2-6
3 Bedrooms	3-8
4 Bedrooms	4-10
5 Bedrooms	6-12

5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

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

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

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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)].

HACP Policy:

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

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

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

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

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

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

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

HACP Policy:

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

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

HACP Policy:

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

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

5-II.E. VOUCHER TERM AND EXTENSIONS

Voucher Term [24 CFR 982.303]

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

HACP Policy:

For all **new** Housing Choice Voucher Program **participants**, ***the initial voucher term will be 90 calendar days.*** For families wishing to transfer to another unit or who have a change in household size, the voucher term will be **120 calendar days**. For families exercising their right of Portability, the Voucher term will be the lesser of the remaining full term of the search period or 120 calendar days. This date may vary based on when the last/current tenancy was terminated

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the HACP grants an extension.

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

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

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

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

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HACP Policy:

The HACP may approve one 30-day extension upon written request from the family.

The HACP will approve additional extensions only in the following circumstances:

- It is necessary as a reasonable accommodation for a person with disabilities.
- It is necessary due to reasons beyond the family's control, as determined by the HACP. Following is a list of extenuating circumstances that the HACP may consider in making its decision.

The presence of these circumstances does not guarantee that an extension will be granted:

- Serious illness or death in the family
- Other family emergency
- Obstacles due to employment
- Whether the family has already submitted requests for tenancy approval that were not approved by the HACP
- Whether family size or other special circumstances make it difficult to find a suitable unit

Any request for an additional extension must include the reason(s) an additional extension is necessary. The HACP may require the family to provide documentation to support the request or obtain verification from a qualified third party.

If HACP determines that the rental market in its jurisdiction is prohibiting voucher holders from finding units, HACP may decide to allow extensions beyond the 120 day period. *The decision to allow additional extensions beyond 120 days must be approved by the Housing Manager.* The family must demonstrate that its due diligence in trying to locate a unit was met by providing HACP a listing of all units looked at and all contacts with landlords made. HACP must also be able to document that the market has higher rents than voucher holders can afford or there are a shortage of rental units available.

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

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

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

The HACP must provide for suspension of the initial or any extended term of the voucher from the date the family submits a request for HACP approval of the tenancy until the date the HACP notifies the family in writing whether the request has been approved or denied.

Expiration of Voucher Term

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

HACP Policy:

Expiration of Applicant Vouchers: If an applicant family's voucher term or extension expires before the family has submitted a Request for Tenancy Approval (RTA), HACP will require the family to reapply for assistance the next time the waiting list is open.

If an RTA that was submitted prior to the expiration date of the voucher is subsequently disapproved by HACP (after the voucher term has expired) the family's voucher will be "tolled" and the number of processing days shall be added to the voucher. The tenant shall be given another RTA to search for another unit for only the days remaining on the voucher after it is tolled. This is not an extension but merely holding the tenant harmless from any processing time.

Within **10 business days** after the expiration of the voucher term or any extension, HACP will notify the family in writing that the voucher term has expired and that the family must reapply in order to be placed on the waiting list.

Expiration of Participant Vouchers:

If a participating family's voucher term or extension expires before the family has submitted a Request for Tenancy Approval (RTA) the family may remain in its current unit with continued voucher assistance if the owner agrees and the PHA approves. If the family has moved out of the unit and the voucher term or extension expires before the family has submitted an RTA then the family will lose its assistance and will be required to reapply for assistance the next time the waiting list is open.

If an RTA that was submitted prior to the expiration date of the voucher is subsequently disapproved by HACP (after the voucher term has expired), the family's voucher will be "tolled" and the number of processing days shall be added to the voucher. The tenant shall be given another RTA to search for another unit for only the days remaining on the voucher after it is tolled. This is

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not an extension but merely holding the tenant harmless from any processing time.

Within **10 business days** after the expiration of the voucher term or any extension, HACP will notify the family in writing that the voucher term has expired and if the family is not currently living in an HCV assisted unit, that the family must reapply when the wait list is open in order to be placed on the waiting ~~list~~

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Chapter 6

INCOME AND SUBSIDY DETERMINATIONS

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

INTRODUCTION

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

PART I: ANNUAL INCOME

6-I.A. OVERVIEW

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

5.609 Annual income. Income Includes:

~~(a) Annual income means all~~ 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)(3)

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- ~~(4) Annual income also means~~All amounts derived (during the 12-month period) received from assets to which any all sources by each member of the family has access who is 18 years of age or older or is the head of household or spouse;
- ~~In addition to this general definition, HUD regulations establish policies~~Unearned income by or on behalf of each dependent who is under 18 years of age; and
- ~~Imputed returns of an asset based on the current passbook savings rate, as determined by HUD, when the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually) and the actual returns from a given asset cannot be calculated.~~

In addition to this general definition, the regulations at 24 CFR 5.609(b) provide a comprehensive listing of all sources of income that are excluded from annual income. Note, unlike in previous versions of the regulations, the current regulations governing annual income do not list sources of income that are to be included. Instead, HUD relies on the definition of excluded income under 24 CFR 5.609(b) to provide the scope of what is included. To that end, generally, all income is included unless it is specifically excluded by regulation.

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but did not receive. For example, a family's child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders [Notice PIH 2023-27]. Annual income also includes all actual anticipated income from assets (provided the income is not otherwise excluded) even if the asset itself is excluded from net family assets [Notice PIH 2023-27]. 24 CFR 5.603(b)(1) describes HUD regulations 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~~Full Definition (Exhibit 6-1)
- ~~Annual Income Exclusions~~ (Exhibit 6-2)
- Treatment of Family Assets (Exhibit 6-~~32~~)
- ~~Earned Income Disallowance for Persons with Disabilities~~ (Exhibit 6-4)
- The Effect of Welfare Benefit Reduction (Exhibit 6-~~53~~)

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

6-I.B. HOUSEHOLD COMPOSITION AND INCOME

Overview

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. in accordance with HUD regulations and PHA policies in Chapter 11. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources <u>(both earned and unearned)</u> is excluded [24 CFR 5.609(e)(5b)(8)].
Foster child or foster adult	Income from all sources <u>(both earned and unearned)</u> is excluded [24 CFR 5.609(e)(2b)(8)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included. [24 CFR 5.609(a)].
<u>Children under 18 years of age</u> <u>Minors</u>	<u>Employment</u> <u>Earned</u> income <u>of children under 18 years of age</u> is excluded [24 CFR 5.609(e)(1b)(3)]. All other sources of <u>unearned</u> income, except those specifically excluded by the regulations, are included. [24 CFR 5.609(a)].
Full-time students 18 years of age or older (not head, spouse, or cohead)	<u>Employment</u> <u>Earned</u> income <u>above \$480/year in excess of the dependent deduction</u> is excluded [24 CFR 5.609(e)(11b)(14)]. All other sources of <u>unearned</u> income, except those specifically excluded by the regulations, are included.

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Temporarily Absent Family Members

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The current regulations governing annual income do not specifically address temporarily absent family members. The regulations also do not define "temporarily" or "permanently" absent or specify a timeframe associated with a temporary versus a permanent absence.

HACP Policy:

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

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HACP Policy:

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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

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this general policy are discussed below.

Absent Students

HACP Policy:

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

Absences Due to Placement in Foster Care

Children temporarily absent from the home as a result of placement in foster care (as confirmed by the state child welfare agency) are considered members of the family [24 CFR 5.403].

HACP Policy:

If a child has been placed in foster care, the HACP 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 continue to be counted as a family member.

Absent Head, Spouse, or Cohead

HACP Policy:

An employed head, spouse, or cohead absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member. The employment assignment must be of a temporary nature such as military service or a construction assignment out of the area. Per HUD regulations, if the head of household is the only member of the family, then the head may not be absent more than 180 days without the HAP contract terminating.

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].

HACP Policy:

The HACP 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

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family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

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

Joint Custody of Dependents

HACP Policy:

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 51 percent or more of the time (183 cumulative days during the calendar year).

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 HACP 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.

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Caretakers for a Child

HACP Policy:

The approval of a caretaker is at the owner and HACP's discretion and subject to the owner and HACP's screening criteria. If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the HACP 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 HACP 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

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the family for any deductions from income.

- (5) All caretakers will be subject to the Authority's non-income background checks. HACP will not approve a particular person as a caretaker, and may withdraw such approval if:

- 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 HACP or to another Housing Authority in connection with Section 8 or public housing assistance under the 1837 Act.

- (6) In the event of a family breakup, HACP may use its discretion to determine which family members will continue to receive assistance according to Chapter 3.I.C. [24 CFR 982.315]

6-I.C. ANTICIPATINGCALCULATING ANNUAL INCOME

The methodology used for calculating income differs depending on whether income is being calculated at initial occupancy, interim reexamination, or at annual reexamination. However, income from assets is always anticipated regardless of certification type.

Anticipating Annual Income [24 CFR 5.609(c)(1)]

At initial occupancy and for an interim reexamination of family income, the PHA is required to count all income "use anticipated to be received from a source outside the family during income (current income) for the upcoming 12-month period following the new admission or annual/interim reexamination effective date" [24 CFR 5.609(a)(2)].

Policies related to anticipating annual/verifying income are provided below.

Basis of Annual Income Projection

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

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

The PHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)] PHAs are required to use HUD's Enterprise Income Verification (EIV) system in its entirety as a third-party source to verify employment and income information, and to reduce administrative subsidy payment errors in accordance with HUD administrative guidance [24 CFR 5.233(a)(2)]. HUD allows PHAs to use

tenant-provided documents (pay stubs) to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where the PHA does not determine it is necessary to obtain additional third-party data.

found in Chapter 7. HACP Policy.

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

If additional pay stubs are submitted, HACP may utilize up to four consecutive paystubs provided to calculate anticipated income for the next annual recertification. Where a participant or applicant has recently commenced employment, HACP will utilize however many pay stubs have been received to date and attempt to supplement them with written verification from the employer. Where an employer fails to respond to a request for verification of wages, HACP may utilize The Work Number to verify wages. The Work Number shall only be utilized when there is a lack of pay stubs and/or employment verification available to HACP.

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

If EIV or other UIV data is not available,

If the family disputes the accuracy of the EIV employer data, and/or
If the HACP determines additional information is needed.

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

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

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

In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the PHA annualized projected income.

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Known Changes in Income

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

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

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

Calculating Annual Income at Annual Reexamination [24 CFR.609(c)(2):

Notice PIH 2023-271

At annual reexamination, PHAs must first determine the family's income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with PHA policies in Chapter 11 and HUD regulations, must be considered. If, however, there have been no changes to income, then the amount of income calculated for the previous 12-month period is the amount that will be used to determine the family's rental assistance. Income from assets is always anticipated, irrespective of the income examination type. Policies related to conducting annual reexaminations are located in Chapter 11.

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

Projecting Income

In HUD's EIV webcast of January 2008, HUD made clear that PHAs are not to use EIV

quarterly wages to project annual income.

6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income:

Wages and Related Compensation [24 CFR 5.609(a); Notice PIH 2023-27]

The earned income of each member of the family who is 18 years of age or older, or who is the head of household or spouse/cohead regardless of age, is included in annual income. Income received as a day laborer or seasonal worker is also included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

Earned income means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits [24 CFR 5.100].

A day laborer is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future [24 CFR 5.603(b)].

A seasonal worker is defined as an individual who is hired into a short-term position (e.g., for which the customary employment period for the position is six months or fewer) and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry [24 CFR 5.603(b)]. Some examples of seasonal work include employment limited to holidays or agricultural seasons. Seasonal work may include but is not limited to employment as a lifeguard, ballpark vendor, or snowplow driver [Notice PIH 2023-27].

HACP Policy:

The HACP will include in annual income 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)].

HACP Policy:

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

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estimated by the employer. The file will be documented appropriately.

Some Types of Military Pay

All regular pay, special pay and allowances of a member of the Armed Forces are counted ~~[24 CFR 5.609(b)(8)] except~~ for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire ~~[24 CFR 5.609(c)(7b)(11)]~~.

Types of Earned Income Not Counted in Annual Income:

Earnings of a Minor

Temporary, Nonrecurring, or Sporadic Income, [24 CFR 5.609(c)(9b)(3)]

~~This type~~A minor is a member of income (including gifts) is not included in annual income. Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting no longer ~~family, other~~ than **180 days** [Notice PIH 2009-18].

~~the head of household or spouse, who is under 18 years of age. **HACP Policy:**~~

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

Children's Earnings

Employment income earned by ~~children (including foster children) under the age~~ minors is not included in annual income. All other sources of 18 years is not included in annual income [24 CFR 5.609(c)(1)]. (See Eligibility chapter for a definition of foster children.) ~~unearned income, except those specifically excluded by the regulations, are included.~~

Certain Earned Income of Full-Time Students [24 CFR 5.609(b)(14)]

Earnings in excess of \$480 for each ~~The earned income of a dependent~~ full-time student 18 years old in excess of the amount of the dependent deduction is excluded from annual income. All sources of unearned income, except those specifically excluded by the regulations, are included.

~~A family member other than the head of household or older (except for the head, spouse, or cohead) are not counted~~ is considered a full-time student if they are attending school or vocational training on a full-time basis [24 CFR 5.609(c)(11); 603(b)].

To be considered

"full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

Income of a Live-in Aide

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

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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 1873 (42 U.S.C. 5044(g), 5058)
- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1885 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1890 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1898 (29 U.S.C. 2931)

Resident Service Stipend

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA'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)].

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HACP Policy:

The HACP 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 of 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].

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Housing Authority of the City of Pittsburgh

The HACP 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 HACP 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 HACP'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(e)(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.

HACP Policy:

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

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Earned Income Tax Credit

Earned income tax credit (EITC) refund payments received on or after January 1, 1994 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(e)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

Earned Income Disallowance

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

6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

[24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16]

Notice PIH 2023-27

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

Eligibility

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

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

HOTMA removed the statutory authority for the EID. The EID is available only to families that are eligible for and participating on the program as of December 31, 2023, or before; no new families may be added on or after January 1, 2024. If a family is receiving the EID prior to or on the effective date of December 31, 2023, they are entitled to the full amount of the benefit for a full 24-month period. The policies below are applicable only to such families. No family will still be receiving the EID after December 31, 2025. The EID will sunset on January 1, 2026, and the PHA policies below will no longer be applicable as of that date or when the last qualifying family

exhausts their exclusion period, whichever is sooner.

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 "baseline income." The family member's baseline income is his or her income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that he or she is participating in the EID. While qualification for the disallowance is the same for all families, calculation of the disallowance will differ depending on when the family member qualified for the EID. Participants qualifying prior to May 9, 2016, will have the disallowance calculated under the "Original Calculation Method" described below which requires a maximum lifetime disallowance period of up to 48 consecutive months. Participants qualifying on or after May 9, 2016, will be subject to the "Revised Calculation Method" Which shortens the lifetime disallowance period to 24 consecutive months. Under both the original and new methods, the EID eligibility criteria, the benefit amount, the single lifetime eligibility requirement and the ability of the applicable family member to stop and restart employment during the eligibility period are the same.

Original Calculation Method

Initial 12-Month Exclusion

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

HACP Policy:

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

~~Second 12-Month Exclusion~~HACP Policy:

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

Second 12-Month Exclusion and Phase-In

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

Lifetime Limitation

The EID has a four-year (48-month) lifetime maximum. The four-year eligibility period

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begins at the same time that the initial exclusion period begins and ends 48 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance. The EID will sunset on January 1, 2026. In no circumstances will a family member's exclusion period continue past January 1, 2026.

HACP Policy:

During the 48-month eligibility period, the HACP 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).

Revised Calculation Method

Initial 12-Month Exclusion

During the initial exclusion period of 12 consecutive months, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded.

HACP Policy:

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

Second 12-Month Exclusion

During the second exclusion period of 12 consecutive months, the PHA must exclude at least 50 percent of any increase in income attributable to employment or increased earnings.

HACP Policy:

During the second 12-month exclusion period, the HACP will exclude 50 percent of any increase in income attributable to new employment or increased earnings.

Lifetime Limitation

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. During the 24-month period, an individual remains eligible for EID even if they begin to receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance.

6-I.F. BUSINESS AND SELF-EMPLOYMENT INCOME [24 CFR 5.609(b)(2)]28;

Notice PIH 2023-271

Annual income includes "the net income from the operation of a business or profession. Net income is gross income minus business expenses that allows the business to

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operate. Gross income is all income amounts received into the business, prior to the deduction of business expenses.

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)].

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Net income is “gross income less business expense” [HCV GB, p. 5-18].

HACP Policy:

To determine business expenses that may be deducted from gross income, the HACP 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.

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Independent Contractors

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

An independent contractor is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done [24 CFR 5.603(b)].

Business Expansion

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

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HACP Policy:

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

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Capital Indebtedness

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

HACP Policy:

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

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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.

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Withdrawal of Cash or Assets from a Business

HUD regulations require the HACP 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.

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HACP Policy:

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

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Co-owned Businesses

HACP Policy:

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

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

Overview

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

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

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)] and Exhibit 6-3 provides the regulatory definition of *not family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and PHA policies related to each type of asset.

Optional policies for family self-certification of assets are found in Chapter 7.

General Policies

Income from

Assets

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

HACP Policy:

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

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Valuing Assets

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

- The market value of an asset is its worth in the market (e.g., the amount a buyer would pay for real estate or the total value of 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.

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HACP Policy:

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

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Lump-Sum Receipts

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are

counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [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), Notice PIH 2012-29]

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

- Note: The HUD field office no longer provides an interest rate for imputed asset income. The "safe harbor" is now for the PHA to establish a passbook rate within 0.75 percent of a national average.
- The PHA must review its passbook rate annually to ensure that it remains within 0.75 percent of the national average.

HACP Policy:

The HACP will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC).

The HACP will review the passbook rate annually, in December of each year. The rate will not be adjusted unless the current HACP rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be set at the current national rate.

Changes to the passbook rate will take effect on February 1st following the December review.

Determining Actual Anticipated Income from Assets

It may or may not be necessary for the PHA 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 investment plan is not counted as income until the family has received

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payments equal to the amount the family member deposited into the retirement investment plan.

Jointly Owned Assets by a Business Entity

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.”

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HACP Policy:

If an asset is owned by more than one person and any family member has unrestricted access to the asset, the HACP 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.

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

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

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

Minimum Threshold

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

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HACP Policy:

The HACP 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.

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

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

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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.

HACP Policy:

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

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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.

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Family Declaration

HACP Policy:

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

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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.

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HACP Policy:

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

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

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

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

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~~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.~~

HACP Policy:

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

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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 HACP 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].

HACP Policy:

In determining the equity, the HACP will determine market value by examining recent sales of at least three properties in the surrounding or similar neighborhood that possess comparable factors that affect market value.

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The HACP will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, the HACP will use the basic loan balance information to deduct from the market value in the equity calculation.

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

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b), Notice PIH 2012-3]
- 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]

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

HACP Policy:

For the purposes of calculating expenses to convert to cash for real property, the HACP will use ten percent of the market value of the home.

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

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

HACP Policy:

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

Trusts

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

Revocable Trusts

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

Nonrevocable Trusts

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

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section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

Retirement Accounts

Company Retirement/Pension Accounts

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

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26]. After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

IRA, Keogh, and Similar Retirement Savings Accounts

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

Personal Property

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

HACP Policy:

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

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

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

HACP Policy:

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

Life Insurance

~~The cash value of a life insurance policy available to a family member before death,~~

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~~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 or total of dividends or interest is counted as income from the asset whether or not the family actually receives it.~~

6-I.H. PERIODIC PAYMENTS

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

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Periodic Payments Included in Annual Income

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

~~If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one-third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [Notice PIH 2023-27].~~

6-I.G. STUDENT FINANCIAL ASSISTANCE [FR Notice 2/14/23 and Notice PIH 2023-27]

Introduction

Section 479B of the HEA requires that all assistance under Title IV of the HEA and Bureau of Indian Affairs student financial assistance, even assistance provided to students in excess of tuition and required fees or charges, be excluded from HUD income calculations.

For Section 8 programs only, however, for over 10 years through FY 2022, HUD appropriations have included a provision that for certain students receiving Section 8 assistance, any amounts received in excess of tuition and any other required fees and charges are considered income (with the exception of students who lived with their parents or who were over the age of 23 with a dependent child).

While the language in various consolidated appropriations acts is limited to federal fiscal year covered by the act, this does not rule out the possibility that similar language will be included in future years' appropriations bills.

- For any funds from a year where HUD's appropriations acts include this limitation, it will apply with respect to Section 8 participants. The PHA will follow the pre-HOTMA Section 8 student financial assistance limitation described below.
- During years in which an appropriations act does not contain this Section 8 student financial assistance limitation (or any other such limitation), then the determination of student financial assistance as included/excluded income for all Section 8 students defaults to the methodology described for the public housing program and listed below.

Pre-HOTMA Section 8 Student Financial

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

Most lump-sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income. Additionally, any deferred disability benefits that are received in a lump-sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [24 CFR 5.609(c)(14)].

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HACP Policy:

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

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Treatment of Overpayment Deductions from Social Security Benefits

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

Periodic Payments Excluded from Annual Income

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship guardianship assistance payments (Kin-GAP) and other similar guardianship payments are treated the same as foster care payments and are likewise excluded from annual income [Notice PIH 2012-1].

HACP Policy:

The HACP 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

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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 Childcare and Development Block Grant Act of 1890 (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.H.) [24 CFR 5.609(c)(14)].
- Lump sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [24 CFR 5.609(c)(14)].

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6-I.I. PAYMENTS IN LIEU OF EARNINGS

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

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6-I.J. WELFARE ASSISTANCE

Overview

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

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

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

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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

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(“welfare agency”) under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

Imputed Income

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, the PHA must include in annual income “imputed” welfare income. The PHA must request that the welfare agency provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

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 welfare 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)].

Limitation [FR 4/10/06; 6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]

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

Alimony and Child Support

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

HACP Policy:

The HACP will count court-awarded amounts for alimony and child support unless the HACP 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.

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Regular Contributions or Gifts

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

HACP Policy:

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

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

6-I.L. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9); Notice PIH 2015-21]

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

Student Financial Assistance Included in Annual Income [24 CFR 5.609(b)(9); FR 4/10/06; Notice PIH 2015-21]

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

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 18651965.
- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based voucher program, or the moderate rehabilitation program.
- They are under 24 years of age **OR** they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition and any other required fees and charges received: (1) under the 18651965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined under the 18651965 HEA, must be included in annual income.

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

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- *Assistance under the Higher Education Act of 18651965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition and fees* are defined in the same manner in which the Department of Education defines *tuition and fees* [Notice PIH 2015-21].
 - This is the amount of tuition and required fees covering a full academic year most frequently charged to students.
 - The amount represents what a typical student would be charged and may not be the same for all students at an institution.
 - If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an academic year is used to estimate average tuition.
 - Required fees include all fixed-sum charges that are required of a large proportion of all students. Examples include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).
 - Expenses related to attending an institution of higher education must **not** be included as tuition. Examples include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed-sum charges.

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

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- Students residing with parents who are seeking or receiving Section 8 assistance
- Students who are enrolled in an educational institution that does **not** meet the 18651965 HEA definition of *institution of higher education*.
- Students who are over 23 **AND** have at least one dependent child, as defined in section 3-II.-E
- Students who are receiving financial assistance through a governmental program not authorized under the 18651965 HEA.

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HOTMA Student Financial Assistance Requirements [24 CFR 5.609(b)(9)]

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students.

Types of Assistance

Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)].

Examples of assistance under title IV of the HEA include:

- Federal Pell Grants;
- Teach Grants;
- Federal Work Study Programs;
- Federal Perkins Loans;
- Income earned in employment and training programs under section 134 of the Workforce Innovation and Opportunity Act (WIOA); or
- Bureau of Indian Affairs/Education student assistance programs
 - The Higher Education Tribal Grant
 - The Tribally Controlled Colleges or Universities Grant Program

Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the Federally mandated income exclusions are excluded [24 CFR 5.609(b)(9)(ii)]. Actual covered costs are defined as the actual costs of:

- Tuition, books, and supplies;
 - Including supplies and equipment to support students with learning disabilities or other disabilities
- Room and board; and
- Other fees required and charged to a student by the education institution.

For a student who is not the head of household or spouse/cohead, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Further, to qualify, other student financial assistance must be expressly:

- For tuition, book, supplies, room and board, or other fees required and charged to the student by the educational institution;
- To assist a student with the costs of higher education; or

Housing Authority of the City of Pittsburgh

- To assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

The student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. However, any student financial assistance paid to the student must be verified by the PHA.

The financial assistance must be a grant or scholarship received from:

- The Federal government;
- A state, tribal, or local government ;
- A private foundation registered as a nonprofit;
- A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- An institution of higher education.

Student financial assistance, does not include:

- Financial support provided to the student in the form of a fee for services performed; (e.g., a work study or teaching fellowship that is not excluded under section 479B of the Higher Education Act HEA);
- Gifts, including gifts from family or friends; or
- Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under the HEA, exceeds the actual covered costs of the student.

Calculating Income from Student Financial Assistance [HOTMA Student Financial Assistance Resource Sheet; Notice PIH 2023-27]

The formula for calculating the amount of other student financial assistance that is excluded from income always begins with deducting the assistance received under 479B of the HEA from the total actual covered costs, because the 479B assistance is intended to pay the student's actual covered costs. When a student receives assistance from both Title IV of the HEA and from other sources, the assistance received under Title IV of the HEA must be applied to the student's actual covered costs first and then other student financial assistance is applied to any remaining actual covered costs. Once actual costs are covered, any remaining student financial assistance is considered income.

HACP Policy:

If a student only receives financial assistance under Title IV of the HEA and does not receive any other student financial assistance, the HACP will exclude the full amount of the assistance received under Title IV from the family's annual

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income. The HACP will not calculate actual covered costs in this case. If the student does not receive any assistance under Title IV of the HEA but does receive assistance from another source, the HACP will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The HACP will then subtract the total amount of the student's financial assistance from the student's actual covered costs. The HACP will include any amount of financial assistance in excess of the student's actual covered costs in the family's annual income.

Example 1

- Actual covered costs: \$20,000
- Other student financial assistance: \$25,000
- Excluded income: \$20,000 (\$25,000 in financial assistance - \$20,000 in actual covered costs)
- Included income: \$5,000

When a student receives assistance from both Title IV of the HEA and from other sources, the HACP will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The assistance received under Title IV of the HEA will be applied to the student's actual covered costs first and then the other student financial assistance will be applied to any remaining actual covered costs.

If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the assistance included under other student financial assistance" would be excluded from income.

Example 2

- Actual covered costs: \$25,000
- Title IV HEA assistance: \$26,000
- Title IV HEA assistance covers the students entire actual covered costs.
- Other Student Financial Assistance: \$5,000
- Excluded income: The entire Title IV HEA assistance of \$26,000
- Included income: All other financial assistance of \$5,000

If the amount of assistance excluded under Title IV of the HEA is less than the actual covered costs, the HACP will exclude the amount of other student financial assistance up to the amount of the remaining actual covered costs.

Example 3

- Actual covered costs: \$22,000
- Title IV HEA assistance: \$15,000
- The remaining amount not covered by Title IV HEA assistance is \$7,000 (\$22,000 in actual covered costs - \$15,000 in Title IV HEA assistance).
- Other Student Financial Assistance: \$5,000
- \$7,000 in remaining actual covered costs - \$5,000 in other financial assistance
- Excluded income: \$15,000 entire amount of the Title IV HEA Assistance + \$5,000 in other financial assistance
- Included income: \$0

Example 4

- Actual covered costs: \$18,000
- Title IV HEA Assistance: \$15,000
- The remaining amount not covered by Title IV HEA assistance is \$3,000 (\$18,000 in actual covered costs - \$15,000 in Title IV HEA Assistance).
- Other student Financial Assistance: \$5,000
- When other student financial assistance is applied, financial assistance exceeds actual covered costs by \$2,000 (\$3,000 in actual covered costs - \$5,000 in other financial assistance).
- Included income: \$2,000 (the amount by which the financial aid exceeds the student's actual covered costs).

6-I.H. PERIODIC PAYMENTS

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

Income that has a discrete end date and will not be repeated beyond the coming year is

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excluded from a family's annual income because it is nonrecurring income. However, this does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended. For example, a family receives income from a guaranteed income program in their city that has a discrete beginning and end date. While the guaranteed income will be repeated in the coming year, it will end before the family's next annual reexamination. This income is fully excluded from annual income.

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income. Payments received in lieu of wages for worker's compensation are excluded, even if paid in periodic payments, if the income will last for a period of less than one year.

HACP Policy:

The HACP will include in annual income 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.

Payments in lieu of earnings, such as unemployment and disability compensation, and severance pay are also counted as income if they are received in the form of periodic payments.

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Lump-Sum Payments for the Delayed Start of a Periodic Payment24 CFR

5.609(b)(16)

Deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts are excluded from annual income.

HACP Policy:

The HACP will include in annual income lump sums received as a result of delays in processing periodic payments (other than those specifically excluded by the regulation), such as unemployment or welfare assistance.

When a delayed-start payment is received that is to be included and the family reports this during the period in which the HACP is processing an annual reexamination, the HACP will adjust the family's rent retroactively for the period the payment was intended to cover.

If the delayed-start payment is received outside of the time the PHA is

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processing an annual reexamination, then the PHA will consider whether the amount meets the threshold to conduct an interim reexamination. If so, the PHA will conduct an interim in accordance with PHA policies in Chapter 11. If not, the PHA will consider the amount when processing the family's next annual recertification.

Retirement Accounts [24 CFR 5.609(b)(26); Notice PIH 2023-27]

Income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals is not considered actual income from assets.

However, any distribution of periodic payments from such accounts is included in annual income at the time they are received by the family.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value.

Social Security Benefits[Notice PIH 2018-24]

The PHA is required to use the gross benefit amount to calculate annual income from Social Security benefits.

Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal Social Security and SSI benefits are adjusted to reflect the increase, if any, in the cost of living. The federal COLA does not apply to state-paid disability benefits. Effective the day after the SSA has announced the COLA, PHAs are required to factor in the COLA when determining Social Security and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year [Notice PIH 2023-27]. When a family member's benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other debts, the PHA must use the gross amount of the income, prior to the reduction, to determine a family's annual income.

HACP Policy:

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. When the SSA overpays an individual, resulting in a withholding or deduction from their benefit amount until the overpayment is paid in full, the PHA will use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount.

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Alimony and Child Support

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family’s child-support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders [Notice PIH 2023-27].

HACP Policy:

The HACP will count all regular payments of alimony or child support awarded as part of a divorce or separation agreement.

The HACP will count court-awarded amounts for alimony and child support unless the family certifies and the HACP verifies that the payments are not being made.

In order to verify that payments are not being made, the HACP will review child support payments over the last three months.

If payments are being made regularly, the HACP will use the amount received during the last 12 months (excluding any lump sums received). If payments have been made for a period less than 12 months, the HACP will average all payments that have been made.

At new admission or interim recertification, if any lump sum payments were made in the past 12 months, the HACP will determine the likelihood of the family receiving another similar payment within the next 12 months before deciding whether or not this amount will be included in the calculation of annual income.

If the HACP determines and can appropriately verify that the family in all likelihood will not receive a similar payment, then the amount will not be considered when projecting annual income.

If the HACP determines that it is likely that the family will receive a similar payment and can appropriately verify it, the amount will be included when projecting annual income.

If no payments have been made in the past three months and there are no lump sums, the HACP will not include alimony or child support in annual income

6-I.I. NONRECURRING INCOME [24 CFR 5.609(b)(24 and Notice PIH 2023-27)]

Nonrecurring income, which is income that will not be repeated beyond the coming year (e.g., 12 months following the effective date of the certification) based on information provided by the family, is excluded from annual income. The PHA may accept a self-certification from the family stating that the income will not be repeated in the coming year. See Chapter 7 for PHA policies related to verification of nonrecurring income.

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Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income as nonrecurring income, even if the source, date, or amount of the income varies.

Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This exclusion does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended.

Income amounts excluded under this category may include, but are not limited to:

- Nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities;
- Payments for eviction prevention;
- Security deposits to secure housing;
- Payments for participation in research studies (depending on the duration); and
- General one-time payments received by or on behalf of the family.

Nonrecurring income that is excluded under the regulations includes:

- Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment [24 CFR 5.609(b)(24)(i)].
- Direct federal or state payments intended for economic stimulus or recovery [24 CFR 5.609(b)(24)(ii)].
- Amounts directly received by the family as a result of state refundable tax credits or state or federal tax refunds at the time they are received [24 CFR 5.609(b)(24)(iii) and (iv)].
- Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries) [24 CFR 5.609(b)(24)(v)].
- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization [24 CFR 5.609(b)(24)(vi)]. When calculating annual income, PHAs are prohibited from assigning monetary value to non-monetary in-kind donations received by the family [Notice PIH 2023-27]. Non-recurring, non-monetary in-kind donations from friends and family are excluded as non-recurring income.
- Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings [24 CFR 5.609(b)(24)(vii)].

6-I.J. WELFARE ASSISTANCE

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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.

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

The PHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-3. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

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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)]

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Imputed Income

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, the PHA must include in annual income “imputed” welfare income. The PHA must request that the welfare agency provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

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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 welfare 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)].

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6-I.K. STATE PAYMENTS TO ALLOW INDIVIDUALS WITH DISABILITIES TO LIVE

AT HOME [24 CFR 5.609(b)(19)]

Payments made by or authorized by a state Medicaid agency (including through a managed care entity) or other state or federal agency to an assisted family to enable a member of the assisted family who has a disability to reside in the family's assisted unit are excluded.

Authorized payments may include payments to a member of the assisted family through state Medicaid-managed care systems, other state agencies, federal agencies or other authorized entities.

The payments must be received for caregiving services a family member provides to enable another member of the assisted family who has a disability to reside in the family's assisted unit. Payments to a family member for caregiving services for someone who is not a member of the assisted family (such as for a relative that resides elsewhere) are not excluded from income.

Furthermore, if the agency is making payments for caregiving services to the family member for an assisted family member and for a person outside of the assisted family, only the payments attributable to the caregiving services for the caregiver's assisted family member would be excluded from income.

6-I.L. CIVIL RIGHTS SETTLEMENTS [24 CFR 5.609(b)(25); FR Notice 2/14/23]

Regardless of how the settlement or judgment is structured, civil rights settlements or judgments, including settlements or judgments for back pay, are excluded from annual income. This may include amounts received because of litigation or other actions, such as conciliation agreements, voluntary compliance agreements, consent orders, other forms of settlement agreements, or administrative or judicial orders under the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act, or any other civil rights or fair housing statute or requirement.

While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family's net family assets (e.g., if the funds are deposited into the family's savings account or a revocable trust under the control of the family or some other asset that is not excluded from the definition of *net family assets*). Income generated on the settlement or judgment amount after it has become a net family asset is not excluded from income. For example, if the family received a settlement or back pay and deposited the money in an interest-bearing savings account, the interest from that account would be income at the time the interest is received.

Furthermore, if a civil rights settlement or judgment increases the family's net family assets such that they exceed \$50,000 (as annually adjusted by an inflationary factor), then income will be imputed on the net family assets pursuant to 24 CFR 5.609(a)(2). If the imputed income, which HUD considers unearned income, increases the family's

annual adjusted income by 10 percent or more, then an interim reexamination of income will be required unless the addition to the family's net family assets occurs within the last three months of the family's income certification period and the PHA or owner chooses not to conduct the examination.

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME [24 CFR 5.609(b)]

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

- Reimbursement Payments received for the care of medical expenses foster children or foster adults or state or tribal kinship or guardianship care payments [24 CFR 5.609(eb)(4)].
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation [24 CFR 5.609(b)(5)]. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income [Notice PIH 2023-27].
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member [24 CFR 5.609(b)(6)]. Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled [24 CFR 5.609(b)(7)].
- Income and distributions from any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code [24 CFR 5.609(b)(10)].
- Income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by federal, state, or local government [24 CFR 5.609(b)(10)].
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].
- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance [24 CFR 5.609(b)(17)]. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse [Notice PIH 2023-27].
- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car) [24 CFR 5.609(b)(20)].

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The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable [Notice PIH 2023-27].

- Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21)]. Generally, payments received by tribal members in excess of the first \$2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained in Notice PIH 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income in HUD programs that adopt the definitions of *annual income* in 24 CFR 5.609, the Census Long Form, and the IRS Form 1040, including the programs affected by Notice PIH 2023-27.
- Replacement housing "gap" payments made in accordance with 49 CFR Part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments [24 CFR 5.609(b)(23)].
- Income earned on amounts placed in a family's Family Self-Sufficiency account [24 CFR 5.609(b)(27)].
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred e.g., special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)(i)(12)(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) [(24 CFR 5.609(c)(8)(ii)(b)(12)(i)].
- Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development [24 CFR 5.600(b)(12)(iii)].

Incremental earnings and benefits to any family member resulting from participation in qualifying training program funded by HUD or in qualifying federal, state, tribal, 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

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program unless those amounts are excluded under 24 CFR 5.609(b)(9)(i) [24 CFR 5.609(b)(12)(iv)].

HACP Policy:

The HACP 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 of 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 HACP 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 PHA 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 PHA’s interim reporting requirements (see Chapter 11).

- 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(e)(10b)(13)]
- Adoption assistance payments for a child in excess of \$480the amount of the dependent deduction per adopted child [24 CFR 5.609(e)(12b)(15)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(e)(15b)(20)]
- ~~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(e)(16)]~~
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(e)(17), FR Notice 5/20/14]. Amounts that HUD is required by federal statute to exclude 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(b) apply. HUD will publish a notice in the *Federal Register* to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

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- HUD publishes an updated list of these exclusions periodically. The most recent list of exclusions was published in the Federal Register on May 20, 2014. It includes:
 - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1877 (7 U.S.C. 2017 (b))
 - (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1866, including WIC
 - (c) Payments to volunteers under the Domestic Volunteer Services Act of 1873 (42 U.S.C. 5044(g), 5058)
 - (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
 - (e) Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
 - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
 - (g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1898 (29 U.S.C. 2931)
 - (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
 - (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
 - (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1890 (25 U.S.C. 1774f(b))
 - (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
 - (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
 - (m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
 - (n) Payments received from programs funded under Title V of the Older Americans Act of 1885 (42 U.S.C. 3056(f))
 - (o) Payments received on or after January 1, 1889, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange product liability litigation*, M.D.L. No. 381 (E.D.N.Y.)
 - (p) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
 - (q) Payments received under the Maine Indian Claims Settlement Act of 1880 (25 U.S.C. 1721)
 - (r) The value of any childcare provided or arranged (or any amount received as

payment for such care or reimbursement for costs incurred for such care) under the Childcare and Development Block Grant Act of 1890 (42 U.S.C. 9858q)

- (s) Earned income tax credit (EITC) refund payments received on or after January 1, 1891 (26 U.S.C. 32(j))
- (t) 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)
- (u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1865j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109-249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109-249) (See Section 6-I.L. for exceptions.)
- (v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1890 (42 U.S.C. 12637(d))
- (w) 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)
- (x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002
- (y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013-30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))
- (z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations

(aa) Distributions from an ABL account, and actual or imputed interest on the ABL account balance [See also Notice PIH 2019-09]

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PART II: ADJUSTED INCOME ASSETS

6-II.A. INTRODUCTION

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Overview

Annual income includes all actual anticipated income from assets (unless otherwise excluded by the regulations) even if the asset itself is excluded from net family assets [Notice PIH 2023-27].

The regulation at 24 CFR 5.603(b)(3) provides a list of items that are excluded from the calculation of net family assets. Note, unlike previous versions of the regulations, the current regulations do not list types of assets that are included in annual income. Instead, HUD relies on the definition of items excluded from assets to provide the scope of what is included. Exhibit 6-2 provides the regulatory definition of *net family assets*. Optional policies for family self-certification of assets are found in Chapter 7. Policies related to the asset limitation may be found in Chapter 3.

Income from assets is always anticipated, irrespective of the income examination type.

HACP Policy:

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The HACP generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. The HACP will use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected, (2) it is not feasible to anticipate a level of income over 12 months, or (3) the HACP believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that

typically receives rental income, but the property is currently vacant, the HACP can take into consideration past rental income along with the prospects of obtaining a new tenant.

Any time 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 HACP to show why the asset income determination does not represent the family's anticipated asset income.

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6-II.B. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE

[24 CFR 5.603(b)(2)]

PHAs must include the value of any business or family assets disposed of by an applicant or participant 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 or reexamination, as applicable, in excess of the consideration received for the asset.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value. [Notice PIH 2023-27].

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Minimum Threshold

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

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HACP Policy:

The PHA 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.

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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.

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HACP Policy:

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

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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. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

Asset Owned by a Business Entity

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [Notice PIH 2023-27].

Family Declaration

HACP Policy:

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

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6-II.C. ASSET INCLUSIONS AND EXCLUSIONS

Checking and Savings Accounts [Notice PIH 2023-27]

HUD considers bank accounts as non-necessary items of personal property. Whether or not necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

- When the combined value of net family assets is greater than \$50,000, as adjusted by inflation, checking and/or savings accounts would be counted toward net family assets.
- When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's checking and/or savings accounts would not be considered when calculating net family assets.

However, actual income from checking and savings accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded.

ABLE Accounts [24 CFR 5.609(b)(10); Notice PIH 2019-09]

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged savings account that an eligible individual can use to pay for qualified disability expenses. Section 103 of the ABLE Act mandates that an individual's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is excluded when determining the designated beneficiary's eligibility and continued occupancy under certain federal means-tested programs. The PHA must exclude the entire value of the individual's ABLE account from the household's assets. Distributions from the ABLE account are also not considered income. However, all wage income received, regardless of which account the money is paid to, is included as income.

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Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds [24 CFR 5.603(b)(1)]

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HUD considers financial investments such as stocks and bonds non-necessary items of personal property. Whether non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

- When the combined value of net family assets is greater than \$50,000, as adjusted by inflation, financial investments such as stocks and bonds are considered part of net family assets. In this case, the value of the family's checking and/or savings accounts would be counted toward net family assets.
- When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's financial investments such as stocks and bonds would not be considered when calculating net family assets.

However, actual income from financial accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, but when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is \$0.

HACP Policy:

The HACP will include interest or dividends earned by investment accounts as actual income from assets even when the earnings are reinvested.

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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.

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

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Necessary and Non-Necessary Personal Property [24 CFR 5.603(b)(3)(i)]

All assets are categorized as either *real property* (e.g., land, a home) or *personal property*.

Personal property includes tangible items, like boats, as well as intangible items, like bank accounts.

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The value of necessary items of personal property is excluded from the calculation of net family assets. Necessary items of personal property include a car used for commuting or medical devices.

HUD defines *necessary personal property* as items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness. Necessary personal property includes more than merely items that are indispensable to the bare existence of the family. It may include personal effects (such as items that are ordinarily worn or utilized by the individual), items that are convenient or useful to a reasonable existence, and items that support and facilitate daily life within the family's home. Necessary personal property also includes items that assist a household member with a disability, including any items related to disability-related needs, or that may be required for a reasonable accommodation for a person with a disability. Necessary personal property does not include bank accounts, other financial investments, or luxury items. Items of personal property that do not qualify as necessary personal property are classified as non-necessary personal property.

The combined value of all **non-necessary** items of personal property is only included in annual income when the combined total value exceeds \$50,000 (adjusted annually by HUD). When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets.

While not an exhaustive list, the following table from Notice PIH 2023-27 provides examples of necessary and non-necessary personal property. (See grid next page)

Housing Authority of the City of Pittsburgh

<u>Necessary Personal Property</u>	<u>Non-Necessary Personal Property</u>
<u>Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter)</u>	<u>Recreational car/vehicle not needed for day-to-day transportation for personal or business use (campers, motorhomes, traveling trailers, all-terrain vehicles (ATVs))</u>
<u>Furniture, carpets, linens, kitchenware</u>	<u>Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds)</u>
<u>Common appliances</u>	<u>Recreational boat/watercraft</u>
<u>Common electronics (e.g., radio, television, DVD player, gaming system)</u>	<u>Expensive jewelry without religious or cultural value, or which does not hold family significance</u>
<u>Clothing</u>	<u>Collectibles (e.g., coins/stamps)</u>
<u>Personal effects that are not luxury items (e.g., toys, books)</u>	<u>Equipment/machinery that is not used to generate income for a business</u>
<u>Wedding and engagement rings</u>	<u>Items such as gems/precious metals, antique cars, artwork, etc.</u>
<u>Jewelry used in religious/cultural celebrations and ceremonies</u>	
<u>Religious and cultural items</u>	
<u>Medical equipment and supplies</u>	
<u>Health care–related supplies</u>	
<u>Musical instruments used by the family</u>	
<u>Personal computers, phones, tablets, and related equipment</u>	
<u>Professional tools of trade of the family, for example professional books</u>	
<u>Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities</u>	
<u>Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)</u>	

HACP Policy:

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

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Lump-Sum Additions to Net Family Assets [24 CFR 5.609(b)(24)(viii); Notice PIH 2023-27]

The regulations exclude income from lump-sum additions to family assets, including lottery or other contest winnings as a type of nonrecurring income. In addition, lump sums from insurance payments, settlements for personal or property losses, and recoveries from civil actions or settlements based on claims of malpractice, negligence, or other breach of duty owed to a family member arising out of law that resulted in a member of the family becoming a family member with a disability are excluded from income.

Further, deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts are also excluded from income.

However, these amounts may count toward net family assets. The PHA must consider any actual or imputed returns from assets as income at the next applicable income examination. In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by 10 percent or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income in accordance with Chapter 11. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last three months of family's income certification period and the PHA chooses not to conduct the examination.

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.

HACP Policy:

Any lump-sum receipts are only counted as assets if they are retained by a family in a form recognizable as an asset. [RHIIP FAQs]. For example, if the family receives a \$1,000 lump sum for lottery winnings, and the family immediately spends the entire amount, the lump sum will not be counted toward net family assets.

Jointly Owned Assets [Notice PIH 2023-27]

For assets owned jointly by the family and one or more individuals outside of the assisted family, the PHA must include the total value of the asset in the calculation of net family assets, unless:

- The asset is otherwise excluded;
- The family can demonstrate that the asset is inaccessible to them; or

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- The family cannot dispose of any portion of the asset without the consent of another owner who refuses to comply.

If the family demonstrates that they can only access a portion of an asset, then only that portion's value is included in the calculation of net family assets for the family. Any income from a jointly owned asset must be included in annual income, unless:

- The income is specifically excluded;
- The family demonstrates that they do not have access to the income from that asset;
or
- The family only has access to a portion of the income from that asset.

If the family demonstrates that they can only access a portion of the income from an asset, then only that portion's value is included in the calculation of income from assets.

If an individual is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise withdraw funds from an account, then the account is not an asset to the assisted family, and the family should provide proper documentation demonstrating that they are only a beneficiary on the account.

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Trusts [24 CFR 5.609(b)(2) and 5.603(b)(4)]

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).

The following types of trust distributions are excluded from annual income:

- Distributions of the principal or corpus of the trust; and
- Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account. There are two types of trusts, *revocable* and *irrevocable*.

When the creator sets up an *irrevocable trust*, the creator has no access to the funds in the account. Irrevocable trusts not under the control of any member of the family or household are not assets. Typically, special needs trusts are considered irrevocable. The value of the trust is not included in net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household [24 CFR 5.603(b)(4)]. Where an irrevocable trust is excluded from net family assets, the PHA must not consider actual income earned by the trust (e.g., interest earned, rental income if property is held in the trust) for so long as the income from the trust is not distributed. If the value of the trust is not considered part of the family's net assets, then distributions from the trust are treated as follows:

- All distributions from the trust's principal are excluded from income.
- Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

A revocable trust is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account.

The value of revocable trusts that are not under the control of the family are excluded from net family assets. This happens when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family. In this case the beneficiary does not "own" the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded from net family assets, no family or household member may be the account's trustee. If this is the case, then distributions from the trust are treated as follows:

- All distributions from the trust's principal are excluded from income.
- Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

Revocable trusts under the control of the family or household (e.g., the grantor is a member of the assisted family or household) are considered assets and must be included in net family assets.

If the value of the trust is considered part of the family's net assets, then distributions from the trust are not considered income to the family. The PHA must count all actual returns (e.g., interest earned) from the trust as income or, if the trust has no actual returns (e.g., if the trust is comprised of farmland that is not in use) and the total value of the combined net family assets exceeds \$50,000 (as that amount is updated for inflation), as imputed returns, as applicable.

Life Insurance [FR Notice 2/14/23 and Notice PIH 2023-27]

Net family assets do not include the value of term life insurance, which has no cash value to the individual before death.

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. The cash value is the surrender value. While the cash value of an insurance policy is considered an asset, the face value of any policy is not. If such a policy earns dividends or interest that the family could elect to receive, the amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

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Tax Refunds [24 CFR 5.603(b)(3)(xi) and Notice PIH 2023-27]

All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of 12 months after receipt by the family.

At the time of an annual or interim reexamination of income, if the federal tax refund was received during the 12 months preceding the effective date of the reexamination, then the amount of the refund that was received by the family is subtracted from the total value of the account in which the federal tax refund or refundable tax credits were deposited. When the subtraction results in a negative number, then the balance of the asset is considered \$0.

If the tax refund or refundable tax credit is deposited into another excluded asset, such as a retirement account or a Coverdell Education Savings Account, then the deposit will have no effect on the balance of the asset (i.e., there is no need for the PHA to subtract the amount of the deposit from the value of the excluded asset).

Asset Exclusions [24 CFR 5.603(b)]

The following are excluded from the calculations of net family assets:

- The value of any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals [24 CFR 5.603(b)(3)(iii)].
- The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located [24 CFR 5.603(b)(3)(iv)].
 - Real property as used in this part has the same meaning as that provided under the law of the state in which the property is located [24 CFR 5.100].
 - Examples of this include but are not limited to co-ownership situations (including situations where one owner is a victim of domestic violence), where one party cannot unilaterally sell the real property; property that is tied up in litigation; and inherited property in dispute [Notice PIH 2023-27].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability [24 CFR 5.603(b)(3)(v)].
- The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 [24 CFR 5.603(b)(3)(vi)].
- The value of any qualified tuition program under Section 529 of such Code [24 CFR 5.603(b)(3)(vi)].
- The value of any "baby bond" account created, authorized, or funded by federal, state, or local government [24 CFR 5.603(b)(3)(vi)].
- Interests in Indian trust land [24 CFR 5.603(b)(3)(vii)].

- Equity in a manufactured home where the family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(viii)];
- Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(ix)];
- Family Self-Sufficiency accounts [24 CFR 5.603(b)(3)(x)];
- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family [24 CFR 5.603(b)(3)(xi)].
- The full amount of assets held in an irrevocable trust [Notice PIH 2023-27]; and
- The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household [Notice PIH 2023-27].

6-II.D. DETERMINING INCOME FROM ASSETS

In some cases, amounts that are excluded from net family assets may be included as annual income when disbursements are made to a family from an asset. In other cases, amounts are excluded from annual income as a lump-sum addition to net family assets, but those funds are then considered a net family asset if held in an account or other investment that is considered part of net family assets [Notice PIH 2023-27].

Net Family Assets

Net family assets are defined as the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

HACP Policy:

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions such as settlement costs and transfer taxes [New PH OCC GB, *Income Determinations*, p. 24].

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

- The market value of an asset is its worth in the market (e.g., the amount a buyer would pay for real estate or the total value of 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.

The cash value of real property or other assets with negative equity would be considered \$0 for the purposes of calculating net family assets. Negative equity in real property or other investments does not prohibit the family from selling the property or other investments, so negative equity alone would not justify excluding the property or

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other investments from family assets [Notice PIH 2023-27].

Actual Income from Assets

Income from assets must be included on the Form HUD-50058 regardless of the amount of income. Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded by 24 CFR 5.609(b).

Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, and not the increase in market value of the asset. The increase in market value is relevant to the cash value of the asset for the purpose of determining total net family assets and imputing income.

The PHA may determine the net assets of a family based on a self-certification by the family that the net family assets do not exceed \$50,000 (adjusted annually by HUD), without taking additional steps to verify the accuracy of the declaration [24 CFR 5.618(b)]. Policies related to verification of assets are found in Chapter 7 of this policy.

The PHA may not calculate or include any imputed income from assets when net family assets total \$50,000 or less [24 CFR 5.609(b)(1)]. The actual income from assets must be included on the Form HUD-50058.

Imputed Income from Assets

When net family assets exceed \$50,000 (adjusted annually by HUD), the PHA may not rely on self-certification. If actual returns can be calculated, the PHA must include actual income from the asset on the Form HUD-50058 (for example, a savings account or CD where the rate of return is known). If actual returns cannot be calculated, the PHA must calculate imputed returns using the HUD-determined passbook rate (for example, real property or a non-necessary item of personal property such as a recreational boat). If the PHA can compute actual income from some but not all assets, the PHA must compute actual returns where possible and use the HUD-determined passbook rate for assets where actual income cannot be calculated [24 CFR 5.609(a)(2)].

An asset with an actual return of \$0 (such as a non-interest-bearing checking account), is not the same as an asset for which an actual return cannot be computed (such as non-necessary personal property). If the asset is a financial asset and there is no income generated (for example, a bank account with a zero percent interest rate or a stock that does not issue cash dividends), then the asset generates zero actual asset income, and imputed income is not calculated. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is consistently \$0.

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PART

III: ADJUSTED INCOME

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6-III.A. INTRODUCTION

Overview

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HUD regulations require PHAs to deduct from annual income any of five mandatory deductions for which a family qualifies: and allow the PHA to deduct other permissive deductions in accordance with PHA policy. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611 Adjusted income means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

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

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(1) \$480 for each dependent; (adjusted annually by HUD, rounded to the next lowest multiple of \$25);

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(2) \$~~400~~525 for any elderly family or disabled family; (adjusted annually by HUD, rounded to the next lowest multiple of \$25);

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

(i) Unreimbursed health and medical care 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.

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Anticipating Expenses

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HACP Policy:

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Generally, the HACP 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 HACP will estimate costs based on historic data and known future costs.

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If a family has an accumulated debt for medical or disability assistance

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expenses, the HACP 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 HACP may require the family to provide documentation of payments made in the preceding year.

When calculating health and medical care expenses, the PHA will include those expenses anticipated to be incurred during the 12 months following the certification date which are not covered by an outside source, such as insurance. The allowance is not intended to give a family an allowance equal to last year's expenses, but to anticipate regular ongoing and anticipated expenses during the coming year. Since these expenses are anticipated, the *PH Occupancy Guidebook* states "it is likely that actual expenses will not match what was anticipated. Typically, this would not be considered an underpayment as long as at the time of the annual reexamination, the expenses were calculated based on the appropriate verification" [New PH OCC GB, *Income Determinations*, p. 30]. For annual reexaminations, the PHA will use information for the previous 12-month period.

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6-II.B. DEPENDENT DEDUCTION

An allowance of \$480 is deducted from annual income for each dependent [24 CFR 5.611(a)(1)], which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25 [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

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6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

A single deduction of ~~\$400~~\$525 is taken for any elderly or disabled family (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25) [24 CFR 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, cohead, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, cohead, or sole member is a person with disabilities [24 CFR 5.403].

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6-III.D. HEALTH AND MEDICAL CARE EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i) and 5.603(b)]

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

~~The medical expense~~This deduction is permitted only for families in which the head, spouse, or cohead is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted

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[VG, p. 28].

Definition of Medical Expenses

HUD regulations define health and medical care expenses at 24 CFR 5.603(b) to mean “any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses, including include medical insurance premiums, and long-term care premiums that are paid or anticipated during the period for which annual income is computed, and that are not covered by.” Medical insurance.” premiums continue to be eligible health and medical care expenses. Health and medical care expenses may be deducted from annual income only if they are eligible and not otherwise reimbursed and may only be deducted for elderly or disabled families.

Although HUD revised the definition of health and medical care expenses to reflect the Internal Revenue Service (IRS) general definition of medical expenses, HUD is not permitting PHAs to specifically align their policies with IRS Publication 502 for determining which expenses are included in HUD’s mandatory deduction for health and medical care expenses. PHAs must review each expense to determine whether it is eligible in accordance with HUD’s definition of health and medical care expenses.

HACP Policy:

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

Summary of Allowable Medical Expenses from IRS Publication 502	
Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are necessary, legal, non-cosmetic	Psychiatric treatment
Services of medical facilities	Ambulance services and some costs of transportation related to medical expenses
Hospitalization, long-term care, and in-home nursing services	The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor	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)

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

Families That Qualify for Both Health And Medical and Disability Assistance Expenses

HACP Policy:

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

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

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

ReasonableUnreimbursed reasonable expenses for attendant care and auxiliary apparatus for a disabledeach member of the, family memberwho is a person with disabilities 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 threeten percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

Earned Income Limit on the Disability Assistance Expense Deduction

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

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

HACP Policy:

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, the HACP 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

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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 HACP 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 Auxiliary Apparatus [Notice PIH 2023-27]

Examples of auxiliary apparatus are provided in the *HCV Guidebook* as follows:

"Auxiliary apparatus are items such as may include expenses for wheelchairs, ramps, adaptations to vehicles, guide dogs, assistance animals, or special equipment to enable a blind person who is blind or has low vision to read or type, but only if these items are directly related to permitting the disabled person or other family member to work" [HCV GB, p. 5-30].

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

Eligible Auxiliary Apparatus

HACP Policy:

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) equipment to assist a person who 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 deaf or hard of hearing.

Eligible Attendant Care [Notice PIH 2023-27]

Examples of attendant care expenses can include teaching a person with disabilities how to perform day-to-day tasks independently like cleaning, bathing, doing laundry, and cooking. Attendant care can be 24-hour care, or care during sporadic periods throughout the day. The family determines the type of attendant care that is appropriate for the person with disabilities.

HACP Policy:

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

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general

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

Payments to Family Members

No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

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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.

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HACP Policy:

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

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

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HACP Policy:

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

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

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6-III.F. CHILDCARE EXPENSE DEDUCTION

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HUD defines *childcare 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 (including foster children) 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 childcare 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

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

Qualifying for the Deduction

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Determining Who Is Enabled to Pursue an Eligible Activity

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HACP Policy:

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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 HACP 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

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HACP Policy:

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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 HACP.

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Furthering Education

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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

HACP Policy:

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

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Earned Income Limit on Childcare 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)].

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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.

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

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HACP Policy:

When the childcare expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, the HACP 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.

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Eligible Childcare Expenses

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

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Allowable Childcare Activities

HACP Policy:

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

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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 HACP 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

Childcare 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 childcare provider verifies, that the expenses are not paid or reimbursed by any other source.

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HACP Policy:

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.

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To establish the reasonableness of childcare costs, the HACP will use the schedule of childcare costs from the local welfare agency. The following website is used as a resource: <https://rcscc.adm.dss.ca.gov/https://rcscc.adm.dss.ca.gov/>, CA Department of Education Reimbursement ceilings for subsidized childcare. Families may present, and the HACP will consider, justification for costs that exceed typical costs in the area.

6-III.G. HARDSHIP EXEMPTIONS [24 CFR 5.611(c), (d), and (e)]

Health and Medical Care and Disability Assistance Expenses [24 CFR 5.611(c):

Notice PIH 2023-27]

The regulations provide for two types of hardship exemption categories for families that qualify for unreimbursed health and medical care expenses and/or disability assistance expenses. A family will benefit from this hardship exemption only if the family has eligible expenses that can be deducted in excess of five percent of annual income. In order to claim unreimbursed health and medical care expenses, the family must have a head, cohead, or spouse that is elderly or a person with a disability. In order to claim unreimbursed reasonable attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed.

Families may be eligible for relief under one of two categories; phased-in relief or general relief, as defined below.

Phased-In Relief

The first category is applicable to all families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review. The family must receive phased-in relief if they are determined to be eligible. These families will begin receiving a 24-month phased-in relief at their next annual or interim reexamination, whichever occurs first.

For these families, the threshold amount is phased-in as follows:

- The family is eligible for a deduction totaling the sum of expenses that exceeds 5 percent of annual income for the first 12 months.
- At the conclusion of 12 months, the family is eligible for a deduction totaling the sum of their expenses that exceed 7.5 percent of annual income for another 12 months.
- At the conclusion of 24 months, the standard threshold amount of 10 percent would be used, unless the family qualifies for relief under the general hardship relief category.
 - When an eligible family's phased-in relief begins at an interim reexamination, the PHA will need to process another transaction one year later to move the family along to the next phase. The transaction can be either an interim reexamination if triggered, or a non-interim reexamination transaction.

Prior to the end of the 24-month period, the family may request a hardship exemption under the second category as described below. If the family is found eligible under the second category, the hardship exemption under the first category ends, and the family's hardship is administered in accordance with the requirements listed below. Once a

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family requests general relief, the family may no longer receive phased-in relief.

PHAs must track the 24-month phase-period for each eligible family, even if a family's expenses go below the appropriate phase-in percentage, during the first or second 12-month phase-in period. The phase-in must continue for families who move to another public housing unit at the same PHA. When the family is treated as a new admission under a different property/program (e.g., the family moves from public housing to the HCV program), unless the PHA has a written policy to continue the phased-in relief upon admission, the family's expense deduction will be calculated using the 10-percent threshold unless request for general relief is approved by the PHA. When a family moves with continued assistance or ports to a new PHA, the family must continue to receive the phased-in relief. The family must receive the remaining calendar months of the percentage phase-in. The PHA must use the existing phase-in documentation to determine the remaining calendar months and the percentage phase-in.

HACP Policy:

The HACP does not administer the Public Housing Program and will not continue the phased-in relief for families who move from public housing to HCV. These families will be treated as new admissions and the sum of expenses that exceeds 10 percent of annual income will be used to calculate their adjusted income.

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General Relief

The second category is for families that can demonstrate:

- Their health and medical and/or disability assistance expenses increased (other than the transition to the higher threshold); or
- The family's financial hardship is a result of a change in circumstances (as defined in PHA policy) that would not otherwise trigger an interim reexamination.

The family may request a hardship exemption under the second category regardless of whether the family previously received the health and medical and/or disability assistance deductions or are currently or were previously receiving relief under the phased-in relief category above. HUD requires that PHAs develop policies defining what constitutes a hardship for purposes of this exemption.

The PHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. PHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

HACP Policy:

To qualify for a hardship exemption, a family must submit a request in writing. The request must show that the family's health and medical and/or disability assistance expenses have increased (other than the transition to the higher threshold) and that the family's financial hardship is a result of a change in circumstances. The HACP defines a *change in circumstances* as a decrease in

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income or increase in other expenses that has resulted in the family's financial hardship but does not, on its own, trigger an interim reexam in accordance with HACP policies.

Examples of circumstances constituting a financial hardship may include the following situations:

The family is awaiting an eligibility determination for a federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits;

The family's income decreased because of a loss of employment, death of a family member, or due to a natural or federal/state declared disaster; or
Other circumstances as determined by the PHA.

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the PHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The PHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions. The notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)].

HACP Policy:

The PHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the PHA denies the hardship exemption request, the PHA notice will also state that if the family does not agree with the PHA determination, the family may request a hearing.

If the family qualifies for an exemption, the PHA will include the date the hardship exemption will begin and the date it will expire as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the family will receive a deduction for the sum of eligible expenses that exceed five percent of annual income.

The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever is earlier. However, the PHA may, at its discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues. PHAs are not limited to a

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maximum number of 90-day extensions.

PHAs must establish written policies regarding the types of circumstances that will allow a family to qualify for a financial hardship and when such deductions may be eligible for additional 90-day extensions. PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

HACP Policy:

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The HACP will extend relief for an additional 90-days if the family demonstrates to the HACP's satisfaction that the family continues to qualify for the hardship exemption based on circumstances described above. The HACP will require updated verification based on the family's current circumstances. Additional extension may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the HACP may terminate the hardship exemption if the HACP determines that the family no longer qualifies for the exemption.

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Childcare Expense Hardship Exemption [24 CFR 5.611(d) and Notice PIH 2023-27]

A family whose eligibility for the childcare expense deduction is ending may request a financial hardship exemption to continue receiving the deduction. If the family demonstrates to the PHA's satisfaction that the family is unable to pay their rent because of the loss of the childcare expense deduction, and that the childcare expense is still necessary even though the family member is not working, looking for work, or seeking to further their education, the PHA must recalculate the family's adjusted income and continue the childcare deduction.

The PHA must develop a policy to define what constitutes a hardship, which includes the family's inability to pay rent. The PHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. PHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

HACP Policy:

For a family to qualify, they must demonstrate that their inability to pay rent would be as a result of the loss of this deduction. The PHA defines this hardship as a potential decrease in income or increase in other expenses that would result from the loss of the childcare expense and such loss would impact the family's ability to pay their rent.

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Some factors to consider when determining if the family is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (childcare expenses or health and medical expenses) are more than 40 percent

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of the family's adjusted income, or verifying whether the family has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent.

The family must also demonstrate that the childcare expense is still necessary even though the family member is no longer employed or furthering their education. The PHA will consider qualification under this criterion on a case-by-case basis (for example, if the family member who was employed has left their job in order to provide uncompensated care to an elderly friend or family member who is severely ill and lives across town).

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the PHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The PHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions.

If the PHA denies the request, the notice must specifically state the reason for the denial. PHAs must provide families 30 days' notice of any increase in rent.

If the PHA approves the request, the notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)]. The notice must also state the requirement for the family to report to the PHA if the circumstances that made the family eligible for relief are no longer applicable and that the family's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption [Notice PIH 2023-27].

HACP Policy:

The PHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the PHA denies the hardship exemption request, the PHA notice will also state that if the family does not agree with the PHA determination, the family may request an informal hearing.

If the family qualifies for an exemption, the PHA will include all required information listed above as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the family will receive a deduction for the sum of eligible expenses that exceed five percent of annual income.

The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever is earlier. However, the PHA may, at its discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues. PHAs are not limited to a

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maximum number of 90-day extensions.

PHAs must establish written policies regarding the types of circumstances that will allow a family to qualify for a financial hardship and when such deductions may be eligible for additional 90-day extensions. PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

HACP Policy:

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The PHA will extend relief for an additional 90-days if the family demonstrates to the PHA's satisfaction that the family continues to qualify for the hardship exemption based on circumstances described above. The PHA will require updated verification based on the family's current circumstances. Additional extension may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the PHA may terminate the hardship exemption if the PHA determines that the family no longer qualifies for the exemption.

Childcare Expense Hardship Exemption [24 CFR 5.611(d) and Notice PIH 2023-27]

A family whose eligibility for the childcare expense deduction is ending may request a financial hardship exemption to continue receiving the deduction. If the family demonstrates to the PHA's satisfaction that the family is unable to pay their rent because of the loss of the childcare expense deduction, and that the childcare expense is still necessary even though the family member is not working, looking for work, or seeking to further their education, the PHA must recalculate the family's adjusted income and continue the childcare deduction.

The PHA must develop a policy to define what constitutes a hardship, which includes the family's inability to pay rent. The PHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. PHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

HACP Policy:

For a family to qualify, they must demonstrate that their inability to pay rent would be as a result of the loss of this deduction. The HACP defines this hardship as a potential decrease in income or increase in other expenses that would result from the loss of the childcare expense and such loss would impact the family's ability to pay their rent.

Some factors to consider when determining if the family is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (childcare expenses or health and medical expenses) are more than 40 percent

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of the family's adjusted income, or verifying whether the family has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent.

The family must also demonstrate that the childcare expense is still necessary even though the family member is no longer employed or furthering their education. The HACP will consider qualification under this criterion on a case-by-case basis (for example, if the family member who was employed has left their job in order to provide uncompensated care to an elderly friend or family member who is severely ill and lives across town).

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the PHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The PHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions.

If the PHA denies the request, the notice must specifically state the reason for the denial. PHAs must provide families 30 days' notice of any increase in rent.

If the PHA approves the request, the notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)]. The notice must also state the requirement for the family to report to the PHA if the circumstances that made the family eligible for relief are no longer applicable and that the family's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption [Notice PIH 2023-27].

HACP Policy:

The HACP will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the HACP denies the hardship exemption request, the HACP notice will also state that if the family does not agree with the HACP determination, the family may request an informal hearing.

If the family qualifies for an exemption, the HACP will include all required information listed above as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days.

The PHA may, at its discretion, extend the hardship exemptions for additional 90-day

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periods based on family circumstances and as stated in PHA policies. PHAs are not limited to a maximum number of 90-day extensions. PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

PHAs must promptly notify families in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. If the PHA denies the request, the notice must specifically state the reason for the denial.

PHAs must notify the family if the hardship exemption is no longer necessary and the hardship exemption will be terminated because the circumstances that made the family eligible for the exemption are no longer applicable. The notice must state the termination date and provide 30 days' notice of rent increase, if applicable.

HACP Policy:

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The PHA will extend relief for an additional 90-days if the family demonstrates to the PHA's satisfaction that the family continues to qualify for the hardship exemption. The PHA will require updated verification based on the family's current circumstances. Additional extension may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the PHA may terminate the hardship exemption if the PHA determines that the family no longer qualifies for the exemption.

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6-III.H. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)(ii)]

The PHA may adopt additional permissive deductions from annual income if they establish a policy in the administrative plan. Permissive deductions are additional, optional deductions that may be applied to annual income. As with mandatory deductions, permissive deductions must be based on need or family circumstance and deductions must be designed to encourage self-sufficiency or other economic purpose. If the PHA offers permissive deductions, they must be granted to all families that qualify for them and should complement existing income exclusions and deductions [PH Occ GB, p. 128] Permissive deductions may be used to incentivize or encourage self-sufficiency and economic mobility.

A PHA that adopts such deductions must have sufficient funding to cover the increased housing assistance payment cost of the deductions. A PHA will not be eligible for an

increase in HCV renewal funding for subsidy costs resulting from such deductions.

HACP Policy:

The HACP has opted not to use permissive deductions.

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PART ~~IIII~~V: CALCULATING FAMILY SHARE AND PHA SUBSIDY

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6-~~IIII~~V.A. OVERVIEW OF RENT AND SUBSIDY CALCULATIONS

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TTP Formula [24 CFR 5.628]

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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:

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- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by the PHA

The PHA 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]

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HACP Policy:

Welfare rent does not apply in this locality.

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Minimum Rent [24 CFR 5.630]

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HACP Policy:

The minimum rent for this locality is **\$50.00 dollars**.

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

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If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the HACP's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy, the **HACP may not approve** the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-~~IIII~~V.C.)

PHA Subsidy [24 CFR 982.505(b)]

The HACP 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~~IV.C.)

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Utility Reimbursement [24 CFR 982.514(b); 982.514(c)]

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

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HACP Policy:

The HACP has the discretion to make utility reimbursements to the family or the utility provider.

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The PHA may make all utility reimbursement payments to qualifying families on a monthly basis or may make quarterly payments when the monthly reimbursement amount is \$15.00 or less. Reimbursements must be made once per calendar-year quarter and must be prorated if the family leaves the program in advance of its next quarterly reimbursement. The PHA must also adopt hardship policies for families for whom receiving quarterly reimbursement would create a financial hardship.

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HACP Policy:

The HACP will issue all utility reimbursements monthly.

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

HACP Policy:

The financial hardship rules described below do not apply in this jurisdiction because the HACP has established a minimum rent of \$50.00 dollars.

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Overview

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

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

HACP Policy:

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

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

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

HACP Policy:

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

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.

- (4) A death has occurred in the family.

HACP Policy:

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

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

HACP Policy:

The HACP has not established any additional hardship criteria.

Implementation of Hardship Exemption

Determination of Hardship

When a family requests a financial hardship exemption, the PHA must suspend the

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minimum rent requirement beginning the first of the month following the family's request.

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

HACP Policy:

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

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

Example: Impact of Minimum Rent Exemption	
Assume the PHA has established a minimum rent of \$50.	
Family Share – No Hardship	Family Share – With Hardship
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$50 Minimum rent	\$ 50 Minimum rent
Minimum rent applies. TTP = \$50	Hardship exemption granted. TTP = \$15

HACP Policy:

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

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

No Financial Hardship

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

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HACP Policy:

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

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Temporary Hardship

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

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

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HACP Policy:

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

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Long-Term Hardship

If the PHA determines that the financial hardship is long-term, the PHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

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HACP Policy:

The hardship period ends when any of the following circumstances apply:

- (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- (2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until the family receives at least \$60/month in income from another source or once again begins to receive the child support.
- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

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6-III.V.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505; 982.503(b)]

Overview

The HACP's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the HACP's payment standards. The establishment and revision of the HACP's payment standard schedule are covered in Chapter 16.

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

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

If the HACP has established an exception payment standard for a designated part of a zip code area or FMR area and a family's unit is located in the exception area, the PHA must use the appropriate payment standard for the exception area.

The HACP is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family's TTP or (2)

the gross rent for the family's unit minus the TTP.

If during the term of the HAP contract for a family's unit, the owner lowers the rent, the HACP will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

Changes in Payment Standards

When the HACP 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.

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Decreases

If a HACP changes its payment standard schedule, resulting in a lower payment standard amount, during the term of a HAP contract, the HACP is not required to reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect [FR Notice 11/16/16].

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However, if the HACP does choose to ***reduce the payment standard*** for families currently under HAP contract, the initial reduction to the payment standard may not be applied any earlier than the ***effective date of the family's second regular reexamination*** following the effective date of the decrease in the payment standard amount. At that point, the HACP may either reduce the payment standard to the current amount in effect on the HACP's payment standard schedule or may reduce the payment standard to another amount that is higher than the normally applicable amount on the schedule. The HACP may also establish different policies for designated areas within their jurisdiction (e.g., different zip code areas).

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In any case, the HACP must provide the family with at least 12 months' notice that the payment standard is being reduced before the effective date of the change. The HACP's policy on decreases in the payment standard during the term of the HAP contract ***apply*** applies to all families under HAP contract at the time of the effective date of the decrease in the payment standard within the designated area.

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HACP Policy:

If a ***HACP*** changes its payment standard schedule resulting in a lower payment standard amount, during the term of a HAP contract, the ***HACP*** will not reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect.

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The ***HACP*** will not establish different policies for decreases in the payment standard for designated areas within their jurisdiction.

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

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

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard ***until their next annual reexamination*** [HCV GB, p. 7-8].

Changes in Family Unit Size

Irrespective of any increase or decrease in the payment standard, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard for the family beginning at the family's first regular reexamination following the change in family unit size.

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Reasonable Accommodation

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the PHA is allowed to establish a higher payment standard for the family of not more than 120 percent of the published FMR.

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

Overview

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. A family's utility allowance is determined by the size of dwelling unit leased by a family or the voucher unit size for which the family qualifies using HACP subsidy standards, whichever is the lowest of the two. See Chapter 5 for information on the HACP's subsidy standards.

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

Reasonable Accommodation and Individual Relief

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~~HCV program regulations require a~~ On request from a family that includes a person with disabilities, the PHA must approve a utility allowance amount which is higher than shown the applicable amount on the HACP's utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation for a family member with a disability. For example, if to make the program accessible and usable by the family member with a disability requires such an accommodation, the HACP will approve an allowance[24 CFR 982.517(e)]. (See Chapter 2 for policies regarding the request and approval of reasonable accommodations.) Further, the PHA may grant requests for air-conditioning, even if the HACP has determined that an individual relief from charges in excess of the utility allowance for air-conditioning generally is on reasonable grounds, such as special factors not needed.

~~In the cases where the unit size leased exceeds the family voucher size, as a reasonable accommodation, HACP may approve a utility allowance for the actual size of the unit leased.~~

within control of the resident, as the PHA deems appropriate. The family must request the higher allowance and provide the HACP with PHA an explanation of the need for individual relief and an explanation about the amount of additional allowance required [see HCV GB, p. 18-8].

PHAs should develop criteria for granting individual relief, notify residents about the availability of individual relief, and notify participants about the availability of individual relief programs (sometimes referred to as “Medical Baseline discounts”) offered by the local utility company.

HACP Policy:

the reasonable accommodation and The family must request the higher allowance and provide the PHA with information about the amount of additional allowance required [HCV GB, p. 18-8].

The HACP will consider the following criteria as valid reasons for granting individual relief:

The family’s consumption was mistakenly portrayed as excessive due to defects in the meter or errors in the meter reading.

The excessive consumption is caused by a characteristic of the unit or owner-supplied equipment that is beyond the family’s control, such as a particularly inefficient refrigerator or inadequate insulation. The allowance should be adjusted to reflect the higher consumption needs associated with the unit until the situation is remedied. The resident should be granted individual relief until the allowance is adjusted.

The excessive consumption is due to special needs of the family that are beyond their control, such as the need for specialized equipment in the case of a family member who is ill, elderly, or who has a disability.

In determining the amount of the reasonable accommodation or individual relief, the PHA will allow a reasonable measure of additional usage as necessary. To arrive at the amount of additional utility cost of specific equipment, the family may provide information from the manufacturer of the equipment, or the family or PHA may conduct an internet search for an estimate of usage or additional monthly cost.

Information on reasonable accommodation and individual relief for charges in excess of the utility allowance will be provided to all families at admission as part of the information on payment standards and utility allowances in the briefing packet. The PHA will also provide information on utility relief programs or medical discounts (sometimes referred to as “Medical Baseline discounts”) that may be available through local utility providers. At its discretion, the PHA may reevaluate the need for the increased utility

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allowance at any regular reexamination.

If the excessive consumption is caused by a characteristic of the unit or PHA-supplied equipment that is beyond the family's control, such as a particularly inefficient refrigerator or inadequate insulation, the individual relief to the resident will cease when the situation is remedied.

Utility Allowance Revisions

At reexamination, the HACP must use the HACP current utility allowance schedule [24 CFR 982.517(d)(2)].

HACP Policy:

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination after the most recent allowance adopted.

6-IIIIV.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520]

HUD regulations prohibit assistance to ineligible family members. A mixed family is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The PHA must prorate the assistance provided to a mixed family. The PHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if the PHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, the PHA subsidy would be reduced to \$250.

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Housing Authority of the City of Pittsburgh

6-85

EXHIBIT 6-1: ANNUAL INCOME ~~INCLUSIONS~~ FULL DEFINITION

24 CFR 5.609

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

(1) ~~Go to, or on behalf of,~~ includes, with respect to 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~~ (1) All amounts, not specifically excluded in paragraph (c) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and

(4) ~~Annual income also means amounts derived (during the 12-month period) from~~ (2) When the value of net family assets to exceeds \$50,000 (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~~ HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and salaries, overtime pay, commissions, fees, tips ~~Clerical Workers) 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;~~

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(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 returns from all net family assets or a percentage of given asset cannot be calculated, imputed returns on the value of such assets asset based on the current passbook savings rate, as determined by HUD; ¹

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(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 (b) Annual income does not include the following:~~

~~(1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.~~

~~(2) The following types of trust distributions:~~

~~(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):~~

~~(A) Distributions of the principal or corpus of the trust; and~~

~~(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.~~

~~(ii) For a revocable trust under the TANF program definition at 45 CFR 260.314; 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 control of the family or household, any distributions from the trust; except that is subject to adjustment any actual income~~

~~earned by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount trust, regardless of welfare assistance income to be included as income shall consist of:~~

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

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

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

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

~~(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), whether it is distributed, 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~~

¹ Text of 45 CFR 260.31 follows.

include loan proceeds for the purpose of determining income the family at the time it is received by the trust.

**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) Nonrecurrent, short-term benefits that:

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

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

(iii) Will not extend beyond four months.

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

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

(4) Refundable earned Earned income tax credits;

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

(6) Services such as counseling, case management, peer support, childcare 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; of age.~~

~~(24) 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); or State or Tribal kinship or guardianship care payments.~~

~~(3) Lump-sum additions to family assets, such as inheritances, insurance⁵) Insurance payments (and settlements for personal or property losses, including but not limited to payments under health and accident insurance, motor vehicle insurance, and worker's workers' compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);~~

~~(46) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member;~~

~~(5) Income (7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.~~

~~(8) Income of a live-in aide, foster child, or foster adult as defined in Sec. §§ 5.403; and 5.603, respectively.~~

~~(6) Subject to paragraph (b)(99) of this~~

~~(i) Any assistance that section, 479B of the full amount of student Higher Education Act of 1965, as amended (20~~

U.S.C. 1087uu), requires be excluded from a family's income; and

(ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from— (

1) The Federal government;

(2) A State, Tribe, or local government;

(3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);

(4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or

(5) An institution of higher education.

(B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

(1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;

(2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching

fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section); (

3) Gifts, including gifts from family or friends; or

4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii) of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

(1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;

(2) Expressly to assist a student with the costs of higher education; or

(3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution; on the student's behalf. Student financial assistance paid to the student must be verified by the

responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(7) The special(E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

(1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).

(2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

(i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or

(ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized,

or funded by Federal, State, or local government.

(11) 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) (12)

(i) 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 (e.g., special equipment, clothing, transportation, child-care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend (not to exceed \$200 per month). A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA'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 training programs funded by HUD or in qualifying Federal, State, Tribal, 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; unless those amounts are excluded under paragraph (b)(9)(i) of this section.

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) (13) 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 (14) Earned income of dependent fulltime students in excess of \$480 the amount of the deduction for each full-time student 18 years old or older (excluding the head of household and spouse); a dependent in § 5.611.

(12) (15) Adoption assistance payments for a child in excess of \$480 per adopted child; the amount of the deduction for a dependent in § 5.611.

(13) [Reserved]

(14) (16) Deferred periodic amounts from supplemental security income and social security Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) (17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

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(18) 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 (19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude 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(e) paragraph (b) of this section apply. AHUD will publish a notice will be published in the Federal Register and distributed to PHAs and housing owners identifying to identify the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See Section 6-I.M. for a list of benefits that qualify

(23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

(24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

(i) Payments from the U.S. Census Bureau for this exclusion-employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

(ii) Direct Federal or State payments

intended for economic stimulus or recovery.

(iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

(iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

(v) Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).

(vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.

(vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement

plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

(i) 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; and

(ii) 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.

EXHIBIT 6-32: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

(1) Net family assets is the net cash value of all assets owned by the family, 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 must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or

reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

(3) Excluded from the calculation of net family assets are: (i) The value of necessary items of personal property; (ii) The combined value of all non-necessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers); (iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-

EXHIBIT 6-(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently

being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

**24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—
Disallowance of increase in annual income.**

(a) Applicable programs. The disallowance of earned income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24

CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) Definitions. The following definitions apply for purposes of this section.

Baseline income. The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person with disabilities (who is a member of a qualified family):

Disallowance. Exclusion from annual income.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least \$500.

(c) Disallowance of increase in annual income—

(1) Initial twelve-month exclusion. During the 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve-month exclusion and phase-in. Upon expiration of the 12-month period defined in paragraph (c)(1) of this section and for the subsequent 12-month period, the responsible entity must exclude from annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

(3) Maximum 2-year disallowance. The

disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) of this section is limited to a lifetime 24-month period. The disallowance applies for a maximum of 12 months for disallowance under paragraph (c)(1) of this section and a maximum of 12 months for disallowance under paragraph (c)(2) of this section, during the 24-month period starting from the initial exclusion under paragraph (c)(1) of this section.

(4) Effect of changes on currently participating families. Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date (see 24 CFR parts 0 to 189, revised as of April 1, 2016).

(d) Inapplicability to admission. The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

EXHIBIT 6-53: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615

Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) Applicability. This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) Definitions. The following definitions apply for purposes of this section:

Covered families. Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at Sec. 5.603.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

- (i) at expiration of a lifetime or other time limit on the payment of welfare benefits;
- (ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or
- (iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income.

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family

member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) Review of PHA decision.

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) PHA relation with welfare agency.

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the

term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

Chapter 7

VERIFICATION

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, Notice PIH ~~2010-18~~2023-27]

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INTRODUCTION

The PHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain written authorization from the family in order to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The PHA must not pass on the cost of verification to the family. The PHA ~~will~~must follow the verification guidance provided by HUD in Notice PIH ~~2010-18~~2023-27, and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA policies.

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Part I describes the general verification process.

Part II provides more detailed requirements related to family information.

Part III provides information on income and assets, and

Part IV covers mandatory deductions.

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 the PHA.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516 AND 982.551, 24 CFR 5.230]; and Notice PIH 2023-27]

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Consent Forms

The family must supply any information that the PHA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 CFR 982.551]. All adult family members must sign consent forms as needed to collect information relevant to the family's eligibility and level of assistance. While PHAs must use form HUD-9886, this form does not release all the information necessary to the administration of the program. The PHA must also develop its own release forms to cover all other necessary information.

Form HUD-9886 [24 CFR 5.230(b)(1), b(2), (c)(4), and (c)(5)]:

Notice PIH 2023-27

All adult applicants and participants sign form HUD-9886, Authorization for Release of Information. All adult family members (and the head and spouse/cohead, regardless of age) are required to sign the Form HUD-9886 at admission. Participants, prior to January 1, 2024, signed and submitted Form HUD-9886 at each annual reexamination. HOTMA eliminated this requirement and instead required that the Form HUD-9886 be signed only once. On or after January 1, 2024 (regardless of the PHA's HOTMA compliance date), current program participants must sign and submit a new Form HUD-9886 at their next interim or annual reexamination. This form will only be signed once. Another Form HUD-9886 will not be submitted to the PHA except under the following circumstances:

- When any person 18 years or older becomes a member of the family;
- When a current member of the family turns 18; or
- As required by HUD or the PHA in administrative instructions.

The PHA has the discretion to establish policies around when family members must sign consent forms when they turn 18. PHAs must establish these policies stating when family members will be required to sign consent forms at intervals other than at reexamination.

HACP Policy:

Family members turning 18 years of age between annual recertifications will be notified in writing that they are required to sign the required Consent to the Release of Information Form HUD-9886 at the family's next annual or interim reexamination, whichever is earlier.

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 the PHA 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.~~

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The PHA may obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (12 U.S.C. 3401), whenever the PHA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits [24 CFR 5.230(c)(4)].

The executed form will remain effective until the family is denied assistance, assistance is terminated, or the family provides written notification to the PHA to revoke consent.

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, the PHA will deny admission to applicant and terminate assistance to participant. The family may request an informal review (applicant) or informal hearing (participant) in accordance with PHA procedures.

However, this does not apply if the applicant, participant, or any member of their family, revokes their consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes a policy that revocation of consent to access financial records will result in denial or termination of assistance or admission [24 CFR 5.232(c)]. PHAs may not process interim or annual reexaminations of income without the family's executed consent forms.

HACP Policy:

The HACP has established a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance in accordance with HACP policy.

In order for a family to revoke their consent, the family must provide written notice to the HACP.

Within **10 business days** of the date the family provides written notice, the HACP will send the family a notice acknowledging receipt of the request and explaining that revocation of consent will result in denial or termination of assistance, as applicable. At the same time, the HACP will notify their local HUD office.

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7-I.B. OVERVIEW OF OTHER PROGRAMS' INCOME DETERMINATIONS

[24 CFR 5.609(c)(3) and Notice PIH 2023-27]

PHAs may, but are not required to, determine a family's annual income, including income from assets, prior to the application of any deductions, based on income determinations made within the previous 12-month period, using income determinations from means-tested federal public assistance programs. PHAs are not required to accept or use determinations of income from other federal means-tested forms of assistance. If the PHA adopts a policy to accept this type of verification, the PHA must establish in policy when they will accept Safe Harbor income determinations and from which programs. PHAs must also create policies that outline the course of action when families present multiple verifications from the same or different acceptable Safe Harbor programs. Means-tested federal public assistance programs include:

- Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601, et seq.);
- Medicaid (42 U.S.C. 1396 et seq.);
- Supplemental Nutrition Assistance Program (SNAP) (42 U.S.C. 2011 et seq.);
- Earned Income Tax Credit (EITC) (26 U.S.C. 32);
- Low-Income Housing Credit (LIHTC) program (26 U.S.C. 42);
- Special Supplemental Nutrition Program for Woman, Infants, and Children (WIC) (42 U.S.C. 1786);
- Supplemental Security Income (SSI) (42 U.S.C. 1381 et seq.);
- Other programs administered by the HUD Secretary;
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding; and
- Other federal benefit determinations made in other forms of means-tested federal public assistance that the Secretary determines to have comparable reliability and announces through the *Federal Register*.

If the PHA elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information by means of a third-party verification. The third-party verification must state the family size, must be for the entire family, and must state the amount of the family's annual income. The annual income need not be broken down by family member or income type. Annual income includes income earned from assets, therefore when using Safe Harbor to verify a family's

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income, PHAs will neither further inquire about a family's net family assets, nor about the income earned from those assets, except with respect to whether or not the family owns assets that exceed the asset limitation in 24 CFR 5.618. The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by the PHA:

- Income determination effective date;
- Program administrator's signature date;
- Family's signature date;
- Report effective date; or
- Other report-specific dates that verify the income determination date.

The only information that PHAs are permitted to use to determine income under this method is the total income determination made by the federal means-tested program administrator. Other federal programs may provide additional information about income inclusions and exclusions in their award letters; however, these determinations and any other information must not be considered by the PHA. PHAs are not permitted to mix and match Safe Harbor income determinations and other income verifications.

If the PHA is unable to obtain Safe Harbor documentation or if the family disputes the other program's income determination, the PHA must calculate the family's annual income using traditional methods as outlined in Notice PIH 2023-27 and this chapter.

If the PHA uses a Safe Harbor determination to determine the family's income, the family is obligated to report changes in income that meet the PHA's reporting requirement and occur after the effective date of the transaction.

The amounts of unreimbursed reasonable attendant care expenses and child-care expenses deducted from a family's annual income, except for when a family is approved for a child-care expense hardship exemption, must still be capped by the amount earned by any family member who is enabled to work as a result of the expense. PHAs are therefore required to obtain third-party verification of the applicable employment income and cap the respective expense deductions accordingly.

HACP Policy:

When available and applicable, the HACP will accept other programs' Safe Harbor determinations of income at annual reexamination to determine the family's total annual income. The HACP will still require third-party verification of all deductions such as the health and medical

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care expense or childcare expense deductions. Further, if the family is eligible for and claims the disability assistance expense or childcare expense deductions, where applicable, the HACP will obtain third-party verification of the amount of employment income of the individual(s) enabled to work in order to cap the respective expenses as required.

Prior to using any Safe Harbor determination from another program, the HACP will ask the family if they agree with the income amounts listed. If the family disputes the income amounts on the Safe Harbor determination, the HACP will obtain third-party verification of all sources of income and assets (as applicable).

The HACP will not accept other programs' determinations of income for any new admission or interim reexamination.

With the exception of income determinations made under the Low-Income Housing Tax Credit (LIHTC) program, the HACP will accept Safe Harbor determinations from any of the programs listed above.

In order to be acceptable, the income determination must:

- Be dated within 12 months of the dates listed above;
- State the family size
- Be for the entire family (i.e., the family members listed in the documentation must match the family's composition in the assisted unit, except for household members); and
- Must state the amount of the family's annual income.

The determination need not list each source of income individually. If the PHA does not receive any acceptable income determination documentation or is unable to obtain documentation, then the PHA will revert to third-party verification of income for the family.

When families present multiple verifications from the same or different acceptable Safe Harbor programs, the PHA will use the most recent income determination, unless the family presents acceptable evidence that the PHA should consider an alternative verification from a different Safe Harbor source.

When the PHA uses a Safe Harbor income determination from another program, and the family's income subsequently changes, the family is required to report the change to the PHA. Depending on when the change occurred, the change may or may not impact the PHA's calculation of the family's total annual income. Changes that occur between the time the PHA receives the Safe Harbor documentation and the effective date of the

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family's annual reexam will not be considered. If the family has a change in income that occurs after the annual reexam effective date, the PHA will conduct an interim reexam if the change meets the requirements for performing an interim reexamination as outlined in Chapter 11. In this case, the PHA will use third-party verification to verify the change.

7-I.C. STREAMLINED INCOME DETERMINATIONS [24 CFR 960.257(c):

Notice PIH 2023-27]

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years, the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or other inflationary adjustment factor. Streamlining policies are optional. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources.

When 90 percent or more of a family's unadjusted income is from fixed sources, the PHA may apply the inflationary adjustment factor to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed and that their sources of fixed income have not changed from the previous year. Sources of non-fixed income are not required to be adjusted and must not be adjusted by a COLA, but PHAs may choose to adjust sources of non-fixed income based on third-party verification. PHAs have the discretion to either adjust the non-fixed income or carry over the calculation of non-fixed income from the first year to years two and three.

When less than 90 percent of a family's unadjusted income consists of fixed income, PHAs may apply a COLA to each of the family's sources of fixed income. PHAs must determine all other income using standard verification requirements as outlined in Notice PIH 2023-27.

HACP Policy

When the PHA does not use a Safe Harbor income determination from a federal assistance program to determine the family's annual income as outlined above, then PHA will use a streamlined income determinations where applicable.

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If 90 percent or more of a family's unadjusted income is from fixed income sources:

- The PHA will streamline the annual reexamination process by applying the verified inflationary adjustment factor to fixed-income sources.
- The family will be required to sign a self-certification stating that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year.
- The PHA will document in the file how the determination that a source of income was fixed was made.
- Third-party verification of non-fixed income will be obtained annually regardless of the percentage of family income received from fixed sources.
- If the family's sources of fixed income have changed from the previous year, the PHA will obtain third-party verification of any new sources of fixed income.

When less than 90 percent of a family's unadjusted income consists of fixed income:

- The PHA will apply a COLA to each of the family's sources of fixed income.
- All other income will be verified using third-party verification as outlined in Notice PIH 2023-27 and Chapter 7 of this policy.

In the following circumstances, regardless of the percentage of income received from fixed sources, the PHA will obtain third-party verification as outlined in Notice PIH 2023-27 and Chapter 7 of this policy:

- Of all assets when net family assets exceed \$50,000;
- Of all deductions and allowances from annual income;
- If a family member with a fixed source of income is added;
- If verification of the COLA or rate of interest is not available;
- During the intake process and at least once every three years thereafter.

7-I.D. VERIFICATION REQUIREMENTS HIERARCHY [Notice PIH 2023-27]

When the PHA does not use a streamlined determination of income or an income determination from a means-tested federal assistance program, HUD requires the PHA to obtain third-party verification of:

- Reported family annual income;
- The value of net family assets when the net value exceeds \$50,000 (as adjusted annually);
- Expenses related to deductions from annual income; and
- Other factors that affect the determination of adjusted income.

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the PHA to use the most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification. **HUD's Verification Hierarchy [Notice PIH 2010-18]**

~~HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the PHA to use the most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification.~~

HUD developed a hierarchy that described verification documentation from most acceptable to least acceptable. The PHA must demonstrate efforts to obtain third party verification prior to accepting self-certification except instances when self-certification is explicitly allowed.

In order of priority, the forms of verification that the PHA will use are hierarchy is:

- Highest: Level 6: Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Highest: Level 5: Up-front Income Verification (UIV) using a non-HUDEIV system
- High: Level 4:
 - Written Third-Party Verification (may be third-party verification from the source, also known as "family-provided by applicant or participant) verification"

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- ~~Or EIV plus self-certification~~

- ~~Medium: Level 3: Written ~~Third~~third-party ~~Verification Form~~ verification form~~
- ~~Medium: Level 2: Oral ~~Third~~third-party ~~Verification~~~~
- ~~Self-Certification~~

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

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Exhibit 7-1 HUD's Verification Hierarchy

Level	Verification Technique	Ranking
6	Upfront Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system (not available for income verifications of applicants)	Highest (Mandatory)
5	Upfront Income Verification (UIV) using non-HUD system	Highest (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 <u>and</u> 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 the PHA; 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)
1	Tenant Declaration	Low (Use as a last resort when unable to obtain any type of third party verification)

- Low: Level 1: Self-certification (not third-party verification)

Each of the verification methods is discussed in subsequent sections below.

File Documentation

The PHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the PHA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

Requirements for Acceptable Documents

HACP Policy:

Any documents used for verification must be the original (not photocopies)

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and generally must be dated within 60 days of the HACP request. The documents must not be damaged, altered or in any way illegible.

Print-outs from Web pages are considered original documents. The HACP staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

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

File Documentation

The PHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the PHA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

HACP Policy:

The HACP will document, in the family file, the following:

- Reported family annual income.
- Value of assets
- Expenses related to deductions from annual income.
- Other factors influencing adjusted income.

When the PHA is unable to obtain third-party verification, the PHA will document in the family file the reason that third-party verification was not available [24 CFR 982.516(a)(2); Notice PIH 2010-18].

7-I.C.E. LEVEL 5 AND 6 VERIFICATION: UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to the PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits for a number of individuals. PHAs may use UIV sources before or during a family reexamination.

UIV will be used to the extent that these systems are available to the PHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the PHA has independently verified

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~~the UIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process of the PHA. UIV will be used to the extent that these systems are available to the PHA.~~

~~There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the PHA 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 the PHA.~~

~~See Chapter 6 for the PHA's policy on the use of UIV/EIV to project annual income.~~

Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)

PHAs must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during ~~mandatory annual and streamlined~~ reexaminations ~~or recertifications~~ of family composition and income in accordance with 24 CFR 5.236 and Notice PIH 2023-27.

~~HUD's administrative guidance issued by HUD. The~~ EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. ~~The following policies apply to the use of HUD's EIV system.~~

~~The income validation tool (IVT) in EIV provides projections of discrepant income for wages, unemployment compensation, and SSA benefits pursuant to HUD's data sharing agreements with other departments.~~
The following policies apply to the use of HUD's EIV system.

EIV Income *and* IVT Reports

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

~~PHAs are required to obtain an EIV Income and IVT report for each family any time the PHA conducts an annual reexamination. However, PHAs are not required to use the EIV Income and IVT reports:~~

- ~~• At annual reexamination if the PHA used Safe Harbor verification from another means-test federal assistance program to determine the family's income; or~~
- ~~• During any interim reexaminations.~~

~~The EIV Income and IVT Reports are also not available for program applicants at~~
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admission.

When required to use the EIV Income Report, in order for the report to be considered current, the PHA must pull the report within 120 days of the effective date of the annual reexamination.

The EIV Income Report may be used to verify and calculate income at annual reexamination if the family self-certifies that the amount is accurate and representative of current income. The family must be provided with the information in EIV.

HACP Policy:

The HACP will Except for when Safe Harbor verification from another means-tested federal assistance program is used to determine the family's annual income, the HACP will obtain EIV income and IVT reports for all annual reexaminations for all families on a monthly basis. The HACP will ensure that all EIV Income Reports will be generated as part are pulled within 120 days of the regular reexamination process.

Income reports will be compared to family-provided information as part effective date of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6-I.C. Income reports may also .

Income and IVT reports will only be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6-I.C. and in this chapter.

Income reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, if for interim reexaminations as necessary to verify earned income, and to verify and calculate unemployment benefits, Social Security and/or SSI benefits. EIV will also. For example, EIV may be used to verify that families claiming zero income are not receiving income from any of these sources listed in EIV.

Income and IVT reports will be retained in participant files with the applicable annual documents or interim reexamination documents (if applicable) for the duration of the family's participation.

When the HACP determines through income EIV reports and third-party verification that a family has concealed or under-reported income,

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corrective action will be taken pursuant to the policies in Chapter 14,
Program Integrity.

New Hires Report [Notice PIH 2023-27]

The New Hires Report identifies participant families who have new employment within the last six months. The report is updated monthly.

PHAs must review this information at annual reexamination except when the PHA uses Safe Harbor verification from another means-tested federal assistance program to determine the family's income.

PHAs that do not require families to undergo interim reexaminations for earned income increases after an interim decrease are not required to review this report between a family's annual reexamination. If the PHA requires an interim for increases in earned income after an interim decrease, then the PHA must review the report quarterly after the family's interim decrease.

HACP Policy:

In accordance with HACP policies in Chapter 11, the HACP does not process interim reexaminations for families who have increases in earned income. Except for instances in which the HACP uses Safe Harbor income determinations to determine a family's annual income, the HACP will only review the New Hires Report at annual reexamination.

No Income Reported by HHS or SSA Report

This report is a tool for PHAs to identify participants who passed the SSA identity test, but no income information was reported by either HHS or SSA records. This scenario does not mean that the participant does not have any income. PHAs obtain written, third-party verification of any income reported by the participant. The PHA must identify in its policies and procedures when this report will be pulled [Notice PIH 2023-27].

HACP Policy:

The HACP will generate the No Income Reported by HHS or SSA Report quarterly and will retain the report.

The HACP will re-verify the status of participants identified on the report quarterly. Based on the information provided by the family and in EIV, the HACP may require that family members provide verifications or sign release forms in order to obtain additional verification.

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

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EIV Identity Verification Report

The EIV system verifies tenant identities against SSA records. These records are compared to **PICHUD** 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 in EIV [Notice PIH ~~2012-10~~2023-27].

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

HACP Policy:

~~The HACP will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.~~

HACP Policy:

~~The HACP will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.~~

The HACP will attempt to resolve **PIC/SSA** discrepancies by obtaining appropriate documentation from the participant. When the **HACPPHA** determines that discrepancies exist ~~due to~~as a result of HACP errors such as spelling errors or incorrect birth dates, it will correct the errors ~~will be corrected~~ promptly.

Deceased Tenants Reports [Notice PIH 2012-4 and Notice PIH 2023-27]

The Deceased Tenant Report identifies residents that have been reported by the SSA as deceased. The PHA is required to review the report at least quarterly.

HACP Policy:

The HACP will **review** the Deceased Tenants Report on a **monthly** basis.

When the Deceased Tenants Report identifies an individual as being deceased, PHAs must immediately send a letter to the head of household or emergency contact person (if the head of household is deceased and there is no other adult household member) to confirm the death of the listed household member. The PHA must notify the owner in writing of the deceased head of household.

PHAs may list the EOP as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred.

HACP Policy:

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The HACP will list the EOP as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred.

When the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy. The PHA may not designate the live-in aide as the new head of household or change the relation code on the Form HUD-50058.

Other EIV Reports [Notice PIH 2023-27]

The PHA is required to review the Multiple Subsidy Report at least quarterly and the Failed EIV Pre-Screening and Failed Verification (Failed SSA Identity Test) reports at least monthly.

Upfront Income Verification Using Non-HUD Systems (Optional)

In addition to mandatory use of the EIV system, HUD encourages PHAs to utilize other upfront verification sources, such as the Work Number and web-based state benefits systems.

HACP Policy:

HACP Policy:

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

- HUD's EIV system

7-I.D. Fixed Income Sources of Income

7-I.F. LEVEL 4 VERIFICATION [Notice PIH 2023-27]

HUD identifies two types of Level 4 verification: written-third party verification from the source and EIV + self-certification.

EIV + Self-Certification

EIV may be used as written third-party verification and may be used to calculate income if the family agrees with the information in EIV and self-certifies that the amount is accurate and representative of current income. This practice is known as EIV + self-certification. When calculating income using this method, the PHA may use its discretion to determine which method of calculation is reasonable: the last four quarters combined or an average of any number of quarters. The family must be provided with the information from EIV.

HACP Policy:

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At annual reexamination, if the HACP is unable to use a determination of income from a means-tested federal assistance program and if there are no reported changes to an income source, the HACP will use EIV + self-certification as verification of employment income, provided the family agrees with the amounts listed in EIV.

The HACP will use an average of the last two quarters of income listed in EIV to determine income from employment. The HACP will provide the family with the information in EIV. The family will be required to sign a self-certification stating that the amount listed in EIV is accurate and representative of current income. If the family disagrees with the amount in EIV, the amount is not reflective of current income, or if less than two quarters are available in EIV, the HACP will use written third-party verification from the source as outlined below.

The HACP will not use this method of verification at new admission since EIV is not available for applicant families or at interim reexamination since the income information in EIV is not current.

Written Third-Party Verification from the Source

Written, third-party verification from the source is also known as "tenant-provided verification." In order to qualify as written-third party verification from the source, the documents must be original or authentic and (generally) dated within 120 days of the date received by the PHA. For fixed-income sources, a statement dated within

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~~For any family member with a fixed source of income, the PHA shall determine that family member's income by means of a streamlined income determination. A streamlined income determination must be conducted by applying, for each fixed-income source, the verified cost of living adjustment (COLA) or current rate of interest to the previously verified or adjusted income amount.~~

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- (1) ~~Family member with a fixed source of income is defined as a family member whose income includes periodic payments at reasonably predictable levels from one or more of the following sources:~~
- ~~(i) Social Security, Supplemental Security Income, Supplemental Disability Insurance,~~
 - ~~(ii) Federal, state, local, or private pension plans,~~
 - ~~(iii) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts;~~
~~or~~
 - ~~(iv) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.~~
- (2) ~~The HACP shall use a COLA or current rate of interest specific to the fixed source of income in order to adjust the income amount. The HACP shall verify the appropriate COLA or current rate of interest from a public source or~~

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~~through tenant-provided, third-party-generated documentation. If no such verification is available, then the HACP shall obtain third-party verification of income amounts in order to calculate the change in income for the source.~~

- ~~(3) For any family member whose income is determined pursuant to a streamlined income determination, the HACP shall obtain third-party verification of all income amounts every 3 years.~~

~~**7-I.E. THIRD-PARTY WRITTEN AND ORAL VERIFICATION**~~ benefit year is acceptable documentation. Documents,

~~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 the PHA by the family. If written third-party verification is not available, the PHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

Written Third-Party Verification [Notice PIH 2010-18]

~~Written third-party verification documents must be original and authentic and~~ may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to, pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

~~The PHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.~~ when calculating income using third-party verification from the source. For new income sources or when two pay stubs are not available, the PHA should determine income based on the information from a traditional written, third-party verification form or the best available information.

~~The PHA~~When the family disputes EIV-reported employment income, the PHA uses written third-party verification.

When verification of assets is required, PHAs are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

HACP Policy:

In general, the HACP will use third-party verification from the source in the following circumstances:

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- At annual reexamination when EIV + self-certification is not used;
- For all new admissions; and
- For all interim reexaminations.

The HACP will not use this method if the HACP is able to use an income determination from a means-tested federal assistance program or if the HACP uses EIV + self-certification as outlined above.

In general, third-party documents provided by the family or the source must be dated within 120 days of the date received by the HACP. However, for fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

The HACP may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

HACP Policy:

Third-party documents provided by the family must be dated within 60 days of the HACP request date.

If the HACP determines that third-party documents provided by the family are not acceptable, the HACP will explain the reason to the family and request additional documentation from the family or will use a lower form of verification such as a written third-party verification form.

As verification of earned income When verification of assets held by a banking or financial institution is required, the HACP will obtain one statement that reflects the current balance of the account.

When pay stubs are used, the HACP will require the family to provide the two most current, consecutive pay stubs. At the HACP's discretion, if additional paystubs are needed due to the family's circumstances (e.g., sporadic income, fluctuating schedule, etc.), If additional pay stubs are submitted, HACP will utilize up to four consecutive paystubs provided to calculate anticipated income for the next annual recertification. Where a participant or applicant has recently commenced employment, HACP will utilize however many pay stubs have been received to date and attempt to supplement them with written verification from the employer. At the HACP's discretion, if additional paystubs are needed due to the family's circumstances (e.g., sporadic income, fluctuating schedule, etc.), the PHA HACP may request additional paystubs or a payroll record.

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~~Where an employer fails to respond to a request for~~ **7-I.G. LEVEL 3**

VERIFICATION: WRITTEN, THIRD-PARTY FORM [Notice PIH 2023 -27]

~~This type of verification of wages, HACP shall utilizes The Work Number to verify wages. The Work Number shall only be utilized when there is a lack of pay stubs and/or employment verification available to HACP.~~

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~~HACP will make two attempts to obtain form developed by the PHA and used uniformly for all families when needed to collect information from a third-party documents provided by the family before attempting other methods of verification.~~

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Written Third-Party Verification Form

~~When upfront verification source. This is not available and the family is unable to provide written third-party documents, the PHA must request a written third-party verification form. HUD's position is that this known as "traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.~~

~~." PHAs may mail, fax, or e-mail third-party written verificationsend a PHA-developed form requests to third-party sources.~~

HACP Policy:

~~The HACP will send third-party verification forms directly to the third-party-party source by mail, fax, or email and the source completes the form by hand (in writing or typeset).~~

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~~Third-party verification forms will be sent when third-party verification documentsThe PHA may use this method when higher forms are unavailable or are rejected by the HACP.~~

~~HACP will make one attempt to obtain verification forms from a third-party before utilizingPHA or when the family is unable to provide acceptable verification. The PHA may skip this level of verification and may instead substitute oral third-party verification methodbefore moving to self-certification.~~

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Oral Third-Party VerificationHACP Policy:

~~Typically, the HACP will attempt to send written third-party verification forms to the verification source whenever higher forms of verification are unavailable.~~

~~However, on a case-by-case basis, the HACP may choose to obtain oral third-party verification without first attempting, and in lieu of, a written-third party verification form.~~

7.I.H. LEVEL 2: ORAL THIRD-PARTY VERIFICATION [Notice PIH 2010-
~~18~~**2023-27**]

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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 requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

PHAs ~~should~~**must** document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

HACP Policy:

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~~In collecting third-party oral-~~The PHA may skip this level of verification, if they attempted written third-party verification via a form and the source did not respond and move directly to self-certification.

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HACP Policy:

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~~In general, the~~ HACP staff will ~~record~~attempt to obtain written third-party verification via a form from the verification source. If written third-party verification forms are not returned within **10 business days**, the HACP will accept self-certification from the family without attempting to obtain oral third-party verification.

~~However, if the HACP chooses to obtain oral third-party verification, the HACP will document in the family's file the date and time of the telephone call or visit, the name and title of the person contacted, the date and time of the conversation (or attempt), the and the telephone number used, and, as well as the facts provided-~~information confirmed.

~~When any source responds verbally to the initial written request for verification the HACP will accept the verbal response as oral verification but will also request that the source complete and return any verification~~

~~forms that were provided.~~

When Third-Party Verification is Not Required [Notice PIH ~~2010-18~~2023-27]

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

HACP Policy:

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

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

Primary Documents

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

Imputed Assets

~~Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.~~

HACP Policy:

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

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

Primary Documents

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

Imputed Assets

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HUD permits PHAs to accept ~~a~~ self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

HACP Policy:

HACP Policy:

The HACP will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

Value of Assets and Asset Income [24 CFR 982.516(a)]

For families with net assets totaling \$5,000 or less, the PHA may accept the family's declaration of asset value and anticipated asset income. However, the PHA is required to obtain third-party verification of all assets regardless of the amount during the intake process and at least every three years thereafter.

HACP Policy:

For families with net assets totaling \$5,000 or less, the HACP will accept the family's self-certification of the value of family assets and anticipated asset income when applicable. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration.

The HACP will use third-party documentation for assets as part of the intake process, whenever a family member is added to verify the individual's assets, and every three years thereafter.

7-I.E.7-I.I. LEVEL 1: NON-THIRD-PARTY VERIFICATION TECHNIQUE: SELF-CERTIFICATION [Notice PIH 2023-27]

~~When HUD requires Non-third-party verification, self-certification consists of a signed statement of reported income and/or "tenant declaration" expenses. This verification method should be used as a last resort when the PHA is unable to obtain third-party verification has not been successful in obtaining information via all other required verification techniques.~~

Self-certification, however, is an acceptable form of verification when:

- A source of income is fully excluded.
- Net family assets total ~~\$550~~,000 or less and the PHA has adopted a policy to accept self-certification ~~at annual recertification, when applicable~~

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- The family declares that they do not have any present ownership in any real property
- A family states that they have non-recurring income that will not be repeated in the coming year; and/or
- The PHA has adopted a policy to implement streamlined annual recertifications for fixed sources of income (See Chapter 11)
- ~~The PHA has adopted a policy to implement streamlined annual recertifications for fixed sources of income (See Chapter 11)~~

When the PHA was required to obtain third-party verification but instead relies ~~on a tenant declaration for verification of income, assets, or expenses~~ self-certification, the family's file must be documented to explain why third-party verification was not available.

HACP Policy:

HUD does not require that a self-certification be notarized; however, HUD recommends including language on any self-certification to ensure the certifier understands the consequences of knowingly providing false information.

HACP Policy:

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the HACPPHA.

The HACP may require a family to certify that a family member does not receive a particular type of income or benefit.

~~The HACP 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 HACPPHA 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 PHA representative or PHA notary public.~~

All self-certifications will include the following language:

"I/We, the undersigned, certify under penalty of perjury that the information provided here is true and correct, to the best of my knowledge and recollection. WARNING: Anyone who knowingly submits a false claim or

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knowingly makes a false statement is subject to criminal and/or civil penalties, including confinement for up to five years, fines, and civil and administrative penalties (18 U.S.C. 287, 1001, 1010, 1012; 31 U.S.C. 3279, 3802)."

Housing Authority of the City of Pittsburgh
PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

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PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

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HACP Policy:

The HACP will require families to furnish verification of legal identity for each household member.

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Verification of Legal Identity for Adults	Verification of Legal Identity for Children

Housing Authority of the City of Pittsburgh

Birth certificate, naturalization papers Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicles identification card U.S. military discharge (DD 214) Current U.S. passport Current employer identification card Current government employer identification card with picture An unexpired foreign passport with an I-551 stamp, or with Form I-94 attached which indicates an unexpired employment authorization A Permanent Resident Card (often called a "green card") or Alien Registration Receipt Card with photograph An unexpired Temporary Resident Card An unexpired Employment Authorization Card An unexpired Employment Authorization Document issued by the Dept. of Homeland Security that includes a photograph (Form I-766) Federal or state ID card provided it contains a photograph and identifying information such as name, date of birth, gender, height, eye color and address. School ID with photograph Voter Registration Card US Coast Guard Merchant Mariner Card Native American tribal document	• Birth certificate • Adoption papers • Custody agreement • Health and Human Services ID • Certified school records • Student Identification card • Clinic, doctor or hospital record • Day care or nursery school record

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If a document submitted by a family is illegible for any reason or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided, and at the HACP's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the HACP and **must** be signed verified in the presence of a HACP representative or HACP notary public by the family member whose information or status is being considered

Housing Authority of the City of Pittsburgh

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the HACP has reason to doubt the identity of a person representing him or herself to be a participant.

7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216, Notice PIH ~~2012-~~ ~~40~~2023-27]

The family must provide documentation of a valid ~~social-security-number~~Social Security Number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include existing program participants who were at least 62 years of age as of January 31, 2010 and had not previously disclosed an SSN.

Note that an individual who previously declared to have eligible immigration status may not change his or her declaration for the purpose of avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements. Nor may the head of household opt to remove a household member from the family composition for this purpose.

The PHA must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual.
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual.

While PHAs must attempt to gather third-party verification of SSNs prior to admission as listed above, PHAs also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if the PHA has exhausted all other attempts to obtain the required documentation. If verifying an individual's SSN using this method, the PHA must document why the other SSN documentation was not available.

If the tenant's SSN becomes verified in EIV, then no further verification is required. If the tenant's SSN fails the SSA identity match, then the PHA must obtain a valid SSN card issued by the SSA or an original document issued by a

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federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual. The tenant's assistance must be terminated if they fail to provide the required documentation.

HACP Policy:

The HACP will verify an individual's SSN in the situations described above using the method described above as a last resort when no other forms of verification of the individual's SSN are available.

The PHA may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document or if the original document has been altered, mutilated, is illegible, or appears to be forged.

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HACP Policy:

The HACP will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the HACP within 90 days.

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In the case of Moderate Rehabilitation Single Room Occupancy (SRO) individuals, the required documentation must be provided within 90 calendar days from the date of admission into the program. The PHA must grant one additional 90-day extension if it determines that the applicant's failure to comply was due to circumstances that were beyond the applicant's control and could not have been reasonably foreseen.

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HACP Policy:

The HACP will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency. If the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the HACP will terminate the applicant or participant's assistance.

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If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of voucher issuance, an otherwise eligible family may be admitted to the program and the family must provide documentation of the child's SSN within 90 days of the effective date of the initial HAP contract. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control.

HACP Policy:

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The HACP will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

When a participant requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The PHA may not add the new household member until such documentation is provided.

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

HACP Policy:

The HACP will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified only once during a continuously assisted occupancy.

HACP Policy:

The HACP will verify each disclosed SSN by:

- Obtaining documentation from applicants and participants that is acceptable as evidence of social security numbers,
- making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder.

Once the individual's verification status is classified as "verified," the HACP may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

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HACP Policy:

Once an individual's status is classified as "verified" in HUD's EIV system, the HACP will remove and destroy copies of documentation accepted as evidence of social security numbers.

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7-II.C. DOCUMENTATION OF AGE

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

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HACP Policy:

If an official record of birth or evidence of social security retirement benefits cannot be provided, the HACP 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.

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Age must be verified only once during a continuously assisted occupancy.

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7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

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HACP Policy:

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

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Marriage

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HACP Policy:

Certification by the head of household is normally sufficient verification. If the HACP has reasonable doubts about a marital relationship, the HACP will require the family to document the marriage.

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A marriage certificate generally is required to verify that a couple is married.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

Separation or Divorce

HACP Policy:

Certification by the head of household is normally sufficient verification. If the HACP has reasonable doubts about a separation or divorce, the HACP will require the family to provide documentation of the divorce or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

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Absence of Adult Member

HACP Policy:

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

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Foster Children and Foster Adults

HACP Policy:

HACP Policy:

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

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7-II.E. VERIFICATION OF STUDENT STATUS

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General Requirements

HACP Policy:

The HACP 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 cohead.
- The family reports child-care expenses to enable a family member to further his or her education.
- The family includes a student enrolled in an *institution of higher education*.

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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.

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HACP Policy:

In accordance with the verification hierarchy described in section 7-1. B, the HACP 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 1865 (see section Exhibit 3-2).
- The student is at least 24 years old.
- The student is a veteran, as defined in section 3-II.E.
- The student is married.
- The student has at least one dependent child, as defined in section 3-II.E.
- The student is a person with disabilities, as defined in section 3-II. E, and was receiving assistance prior to November 30, 2005.

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If the PHA cannot verify at least one of these exemption criteria, the 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, the PHA will then proceed to verify either the student's parents' income

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eligibility (see section 7-III.J) or the student's independence from his/her
parents (see below).

Independent Student

HACP Policy:

The HACP 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 and verifying previous address information to
determine whether the student has established a household
separate from his/her parents for at least one year, or reviewing
and verifying documentation relevant to determining whether the
student meets the U.S. Department of Education's definition of
independent student (see section 3-II. E)

Reviewing the student's prior year income tax returns to verify the
student is independent or verifying the student meets the U.S.
Department of Education's definition of independent student (see
section 3-II. E)

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, except
in cases in which the HACP determines that the student is a
vulnerable youth (see section 3-II. E)

7-II.F. DOCUMENTATION OF DISABILITY

The PHA must verify the existence of a disability in order to allow certain income
disallowances and deductions from income. The PHA is not permitted to inquire
about the nature or extent of a person's disability [24 CFR 100.202(c)]. The PHA
may not inquire about a person's diagnosis or details of treatment for a disability
or medical condition. If the PHA receives a verification document that provides
such information, the PHA will not place this information in the tenant file. Under
no circumstances will the PHA request a participant's medical record(s). For more
information on health care privacy laws, see the Department of Health and Human
Services' website at <http://www.hhs.gov/ocr/privacy/>.

The above cited regulation does not prohibit the following inquiries, provided these

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inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

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

Family Members Receiving SSA Disability Benefits

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

HACP Policy:

For family members claiming disability who **receive** disability benefits from the SSA, the HACP will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system. If documentation from HUD's EIV System is not available, the HACP will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is

unable to provide the document(s), the HACP will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov. Once the applicant or participant receives the benefit-verification letter, he/she will be required to provide it to the HACP.

Family Members Not Receiving SSA Disability Benefits

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403.

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HACP Policy:

For family members claiming disability who **do not receive** disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

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7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]

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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~~people. A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and PHA verification requirements related to citizenship status.

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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 a continuously assisted occupancy. [24 CFR 5.508(g)(5)]

U.S. Citizens and Nationals

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HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The PHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

HACP Policy:

Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the HACP receives information indicating that an individual's declaration may not be accurate.

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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 7-1 at the end of this chapter summarizes documents family members must provide.

PHA Verification [HCV GB, pp. 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. 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, the PHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The PHA will follow all USCIS protocols for verification of eligible immigration status.

7-II.H. VERIFICATION OF PREFERENCE STATUS

The PHA must verify any preferences claimed by an applicant that determined placement on the waiting list.

HACP Policy:

The HACP will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. The HACP will verify this preference using the HACP's termination records.

The HACP also offers a preference for victims of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking as described in Section 4-III.C. To verify that applicants qualify for the preference, the HACP will follow documentation requirements outlined in Section 16-IX.D.

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.

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HACP Policy:

The following policies do not apply when the HACP uses a safe harbor income determination from a means-tested federal assistance program.

7-III.A. EARNED INCOME

Tips

HACP Policy:

Unless tip income is included in a family member's W-2 by the employer, or in UIV verification sources, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and/or tips anticipated to be received in the coming year.

Wages

HACP Policy:

ForWhen the PHA requires third-party verification of wages for wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

The PHA must obtain written, third-party verification when the income type is not available in EIV. This includes income from self-employment.

HACP Policy:

Business owners and self-employed persons will be required to provide:

- ~~— All available income information as well as a self-certification of projected income that they expect to receive over the next 12 months.~~
- ~~— If a family member has been self-employed for less than three (3) months, the PHA will accept a Self-Certification projecting the income from self-employment that the family expects to receive over the next 12 months. The family must schedule an Interim recertification in three (3) months if they are not able to provide documents other than the Self-Certification.~~
- ~~— If the family is able to provide documentation of income/ expenses, (copies of gross receipts, bank statements, cash receipts, payment logs, etc.) and those documents support the Self-Certified projection, the family is not required to~~

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~~schedule an Interim Recertification in three months. Interim Recertification would be required if the only verification of earnings provided was Self-Certification. An audited financial statement for the previous fiscal year if an audit was conducted.~~

- ~~— If a family member has been self-employed for three (3) months to twelve (12) months, the PHA will accept a Self-Certification projecting the income from self-employment that the family expects to receive over the next 12 months along with documentation of income/ expenses (copies of gross receipts, bank statements, cash receipts, payment logs etc.). If available, the family must provide schedules completed for filing federal and local taxes in the preceding year (Schedule C).~~
- ~~— If a family member has been self-employed for twelve (12) or more months, the PHA will accept a Self-Certification projecting the income from self-employment that the family expects to receive over the next 12 months along with documentation of income/ expenses (copies of gross receipts, bank statements, cash receipts, payment logs etc.) along with schedules completed for filing federal and local taxes in the preceding year (Schedule C).~~
- ~~— HACP may request any additional documentation that supports calculations found in tax returns.~~
- Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.).
- 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.
- For self-employed individuals who claim they do not to file tax returns, The PHA will obtain a completed copy of IRS Form 4506-T to verify that no return has been filed.
- For those employed in "gig employment" (i.e., those in formal agreements with on-demand companies such as Uber, Lyft, or DoorDash), the PHA will provide a format for the individual to declare their income and expenses. The PHA will also review the printed statement of monthly income from the applicable app for all hours worked and pay received as well as the Schedule C of the individual's tax return and the corresponding IRS Form 1099 or 1099k.

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The PHA 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 its accuracy at all future reexaminations.

At any reexamination the HACPPHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the PHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the PHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 11.

Social Security/ SSI Benefits [Notice PIH 2023-27]

Verification requirements for Social Security (SS)/ and Supplemental Security Income (SSI) **Benefits**

HACP Policy:

To verify the SS/SSI benefits of differ for applicants, the HACP will request a and participants.

For applicants, since EIV does not contain SS or SSI benefit information, the PHA must ask applicants to provide a copy of their current SS and/or SSI benefit letter (dated within the last 60/120 calendar days) SSA benefit verification letter from for each family member that receives social security SS and/or SSI benefits. If the family is unable to provide the document(s), the HACP will help or documents, the PHA should help the applicant request a benefit verification letter from SSA's Web site website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once The PHA must obtain the original benefit letter from the applicant has received the benefit verification letter, he/she will be required to provide it, make a photocopy of the document for the file, and return the original to the HACP family.

To verify the SS/SSI benefits of For participants, the HACP will PHA must obtain information about SS/SSI benefits through the HUD EIV System, system and confirm with the participant(s) participants that the current listed benefit amount is

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correct.

- If the participant agrees with the amount reported in EIV, the PHA must use the EIV-reported gross benefit amount to calculate annual income from Social Security. PHAs are required to use the EIV-reported SS and SSI benefit amounts when calculating income unless the tenant disputes the EIV-reported amount. For example, an SSA benefit letter may list the monthly benefit amount as \$450.80 and EIV displays the amount as \$450.00. The PHA must use the EIV-reported amount unless the participant disputes the amount.
- If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in HUD-systemsEIV, the HACP will PHA must request a current SSA benefit verification letter (dated within the last 120 calendar days) from each family member that receives social-securitySS and/or SSI benefits. If the family is unable to provide the document(s) the HACP will help or documents, the PHA should help the participant request a benefit verification letter from SSA's Web-sitewebsite at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the participant has received the benefit-verification letter, he/she will be required to provide it to the HACP. The PHA must obtain the original benefit letter from the participant, make a photocopy of the document for the file, and return the original to the family.

Photocopies of social security checks or bank statements are not acceptable forms of verification for SS/SSI benefits.

7-III.D. ALIMONY OR CHILD SUPPORT [Notice PIH 2023-27]

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family's child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders. A copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family.

HACP Policy:

The methods the HACP will use to verify alimony and child support payments differ depending on whether the family declares that it receives regular payments.

If the family declares that it **receives regular payments**, verification will be obtained in the following order of priority:

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1. Copies of the receipts and/or payment stubs for the ~~60 days~~^{12 months} prior to HACP request
2. Third-party verification form from the state or local child support enforcement agency
3. Third-party verification form from the person paying the support.
4. Family's self-certification of amount received.

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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:

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1. ~~A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts.~~
2. ~~If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts~~

Note: Families are not required to undertake independent enforcement action.

7-III.E. NONRECURRING INCOME [Notice PIH 2023-27]

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. PHAs may accept a self-certification from the family stating that the income will not be repeated in the coming year.

HACP Policy:

The HACP will accept self-certification from the family stating that income will not be repeated in the coming year. However, the HACP may choose, on a case-by-case basis, to require third-party verification that income sources will not be repeated in the coming year.

7-III.E. ASSETS AND INCOME FROM ASSETS

Net Family Assets Declared to be less than \$5000.00[24 CFR 5.603]

At admission and reexam, for families with net assets totaling \$50,000 or less (adjusted annually), the PHA may, but is not required to, accept the family's self-

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certification that the family's assets do not exceed \$50,000 without taking any additional steps to verify the accuracy of the declaration. The declaration must include the amount of income the family expects to receive from assets which must be included in the family's income. This includes declaring income from checking and savings accounts which, although excluded from the calculation of net family assets (because the combined value of non-necessary personal property does not exceed \$50,000), may generate asset income. PHAs must clarify during the self-certification process which assets are included/excluded from net family assets.

For PHAs that choose to accept self-certification, the PHA is required to obtain third-party verification of all assets, regardless of the amount, at least once every three years.

PHAs who choose not to accept self-certifications of assets must verify all families' assets on an annual basis.

When net family assets have a total value over \$50,000, the PHA may not rely on the family's self-certification. Third-party verification of assets is required when net family assets exceed \$50,000, adjusted annually by HUD.

When verification of assets is required, PHAs are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

HACP Policy:

For families with net assets totaling \$50,000 or less, the HACP will accept the family's self-certification of the value of family assets and anticipated asset income. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration. The HACP reserves the right to require additional verification in situations where the accuracy of the declaration is in question. Any income the family expects to receive from assets will be included in the family's annual income. The family will be required to provide third-party verification of net family assets every three years.

When verification is required, in determining the value of checking or savings accounts, the PHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account when verification is required and the rate of return is known, the HACP will multiply the current balance of the account by the current rate of interest paid on the account. If a checking account does not bear interest, the anticipated income from the account is zero.

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In accordance with PIH Notice 2013-3, HACP has elected to allow households to self-certify assets with a total household value of less than \$5000 and will not require third party verification of these assets. Households will be required to declare the value of all assets on the Personal Declaration and this declaration will serve as self-certification for assets with a cumulative total of less than \$5000. All assets with a cumulative declared value greater than \$5000 must be verified through the verification hierarchy described in this Chapter

Assets Disposed of for Less than Fair Market Value

The Self-Certification of Real Property Ownership [24 CFR 5.618(b)(2)]

The PHA must determine whether a family has present ownership in real property that is suitable for occupancy for purposes of determining whether the family is compliant with the asset limitation described in Chapters 3 and 12. At admission and reexam, the PHA may accept a self-certification from the family that the family does not have any present ownership in any real property that is suitable for occupancy. If the family declares they have present ownership in real property, the PHA must obtain third-party verification.

HACP Policy:

Both at admission and reexam, the PHA will accept self-certification from the family that the family does not have any present ownership in any real property. The certification will state that the family does not have any present ownership interest in any real property and must be signed by all family members 18 years of age and older. The PHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question.

If the family declares they have a present ownership in real property, the PHA will obtain third-party verification of the following factors: whether the family has the legal right to reside in the property; whether the family has effective legal authority to sell the property; and whether the property is suitable for occupancy by the family as a residence. However, in cases where a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA will comply with confidentiality requirements under 24 CFR 5.2007 and will accept a self-certification.

7-III.G. 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. HUD permits PHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28]. The PHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

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HACP Policy:

The HACP will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

The HACP will verify the value of assets disposed of only if:

- The HACPPHA 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 ~~to be~~ obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and the HACPPHA verified this amount. Now the person reports that she has given this \$10,000 to her son. The HACPPHA has a reasonable estimate of the value of the asset; therefore, reverification 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 ~~the~~ her share at approximately \$5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the HACPPHA will verify the value of this asset.

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7-III. FH. NET INCOME FROM RENTAL PROPERTY

HACP Policy:

The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant.
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income).

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- If schedule E was not prepared, the **HACPPHA** 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 ~~the following~~: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

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7-III.GI. FEDERAL TAX REFUNDS OR REFUNDABLE TAX CREDITS

[Notice PIH 2023-27]

PHAs are not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are equal to or below \$50,000 (adjusted annually for inflation), even in years when full verification of assets is required or if the PHA does not accept self-certification of assets. PHAs must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than \$50,000.

7-III.J. RETIREMENT ACCOUNTS

HACP Policy:

~~The HACP will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.~~

~~The type of original document that will be accepted depends upon the family member's retirement status.~~

- ~~Before retirement, the HACP 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 HACP 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 HACP~~**The PHA** 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.

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7-III.HK. INCOME FROM EXCLUDED SOURCES [Notice PIH 2023-27]

A detailed discussion of excluded income is provided in Chapter 6, Part I.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, the PHA is **not** required to follow the verification hierarchy, document why third-party verification is not available, or report the income on the 50058. *Fully excluded income* is defined as income that is entirely where the entire amount qualifies to be excluded from the annual income determination in accordance with 24 CFR 5.609(b) and any Federal Register notice on mandatory exclusions issued by HUD (for example, food stamps, earned income of a minor, or foster care funds) [Notice PIH 2013-04].

PHAs may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion, PHAs have the option of requiring additional verification.

For ***partially excluded income***, the PHA **is** required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student, or income excluded under the earned income disallowance).

HACP Policy:

The HACP will accept the family's self-certification as verification of fully excluded income. The HACP may request additional documentation if needed to document the income source.

The HACP will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

7-III.II. ZERO ANNUAL INCOME STATUS REVIEWS [Notice PIH 2023-27]

A zero income review is an assessment, sometimes periodic, performed by the PHA of the income of a family who claims that they do not receive income from any source, including from assets. During such reviews, it is common for PHAs to

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request that families complete and sign a worksheet explaining how they pay for the household's expenses. HUD does not require PHAs to conduct periodic zero income reviews. In calculating annual income, PHAs must not assign monetary value to nonmonetary in-kind donations from a food bank or similar organization received by the family [24 CFR § 5.609(b)(24)(vi)]. PHAs that perform zero income reviews must update local discretionary policies, procedures, and forms. Families who begin receiving income which does not trigger an interim reexamination should no longer be considered zero income even though the family's income is not reflected on the Form HUD-50058

HACP Policy:

The HACP will check UIV sources and/or may request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, and earningsearned income, child support, etc., are not being received by families claiming to have zero annual income.

The PHA will also require that each family member who claims zero income status complete a zero-income form. If any sources of income are identified on the form, the PHA will verify the income in accordance with the policies in this chapter prior to including the income in the family's annual income.

The PHA will only conduct interims in accordance with PHA policy in Chapter 11.

7-III.JM. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9)]

Any The regulations under HOTMA distinguish between two categories of student financial assistance, in excess of paid to both full-time and part-time students. Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)]. Any other grant-in-aid, scholarship, or other assistance amounts received an individual receives for tuition, that a person attending an institutionthe actual covered costs charged by the institute of higher education receives under the Higher Education Act of 1865, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR 5.609(b)(9) and FR 4/10/06].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student

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~~financial assistance is excluded from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also not otherwise excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, the PHA would not be able to determine whether or to what extent the income is to be by the federally mandated income exclusions are excluded (see section 7-III.H).~~

HACP Policy:

~~For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 CFR 5.609(b)(9), the (ii)].~~

HACP Policy:

The HACP will request written third-party verification of both the source and the amount of student financial assistance. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, unless the student's only source of assistance is assistance under Title IV of the HEA, the HACP will request written verification of the cost of the student's tuition amount, books, supplies, room and board, and other required fees and charges to the student from the educational institution.

If the HACP is unable to obtain third-party written verification of the requested information, the HACP will pursue other forms of verification following the verification hierarchy in section 7-I.B.

7-III.KN. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents or a *vulnerable youth* in accordance with PHA policy **[24 CFR 5.612, FR Notice 4/10/06, p. 18146, and FR Notice 9/21/16]**.

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

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HACP Policy:

If the HACP is required to determine the income eligibility of a student's parents, the HACP will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3-II.E). The HACP will send the request directly to the parents, who will be required to certify their income under penalty of perjury. The parents will be required to submit the information directly to the HACP. The required information must be submitted (postmarked) within 10 business days of the date of the HACP's request or within any extended timeframe approved by the HACP.

The HACP reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

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PART IV: VERIFYING MANDATORY DEDUCTIONS

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

The dependent and elderly/disabled family deductions require only that the PHA 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. The PHA must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or cohead of the family and is not a foster child.
- Any person aged 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.

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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. The PHA must verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

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7-IV.B. **HEALTH AND MEDICAL CARE EXPENSE DEDUCTION**

Policies related to medical expenses are found in Chapter 6-II-D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

The PHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed health and medical care expenses. The PHA may not request documentation beyond what is sufficient to determine anticipated health and medical care costs. Before placing bills and documentation in the tenant file, the PHA must redact all personally identifiable information [FR Notice 2/14/23].

Amount of Expense

HACP Policy:

Medical expenses will be verified through:

- Written third-party documents provided by the family, such as pharmacy printouts or receipts.
- The~~When income is projected at new admission or interim, the~~ HACP will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The HACP will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
- Written third-party verification forms, if the family is unable to provide acceptable documentation.
- ~~If~~When income is projected at new admission or interim, if third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

Before placing bills and documentation in the tenant file, the PHA will redact all personally identifiable information.

If the PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the PHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the PHA will note in the individual's file that verification was received, the date received, and the

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name and address of the person/organization that provided the verification. Under no circumstances will PHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

In addition, the HACP must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified health and medical care 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 health and medical care expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62, or a person with disabilities. The PHA must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

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Qualified Expenses

To be eligible for the health and medical ~~expenses~~ care expense deduction, the costs must qualify as medical expenses. See Chapter 6 ~~(6-II.D.)~~ for the PHA's policy on what counts as a medical expense.

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Unreimbursed Expenses

To be eligible for the health and medical ~~expenses~~ care expense deduction, the costs must not be reimbursed by another source.

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HACP Policy:

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

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Expenses Incurred in Past Years

HACP Policy:

~~When~~At new admission and interim reexam, when anticipated costs are related to on-going payment of medical bills incurred in past years, the HACP will verify:

- The anticipated repayment schedule,
- The amounts paid in the past, and

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- Whether the amounts to be repaid have been deducted from the family's annual income in past years

7-IV.C. DISABILITY ASSISTANCE EXPENSES

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

The PHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed auxiliary apparatus or attendance care costs. The PHA may not request documentation beyond what is sufficient to determine anticipated reasonable attendant care and auxiliary apparatus costs. Before placing bills and documentation in the tenant file, the PHA must redact all personally identifiable information [FR Notice 2/14/23].

Amount of Expense

Attendant Care

HACP Policy

~~The HACP will accept written third-party documents provided by the family. If family-provided documents are not available, the HACP will provide a third-party verification form directly to the care provider requesting the needed information.~~

Expenses for attendant care will be verified through:

- Written third-party documents provided by the family, such as receipts or cancelled checks.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- When income is projected at new admission or interim, if third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Before placing bills and documentation in the tenant file, the PHA will redact all personally identifiable information.

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If the PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the PHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the PHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will PHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

Auxiliary Apparatus

HACP Policy:

Expenses for auxiliary apparatus will be verified through:

- Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- If third-party verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the HACP must 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 Chapter 6-II.E.-).
- The expense is not reimbursed from another source (as described in Chapter 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. The PHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

Family Member(s) Permitted to Work

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The PHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

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HACP Policy:

The HACP will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.). This documentation may be provided by the family.

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If third-party 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.

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HACP Policy:

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

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7-IV.D. CHILDCARE EXPENSES

Policies related to childcare expenses are found in Chapter 6 ~~(6-II.F.)~~. The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the PHA must verify that:

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- The child is eligible for care (12 or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education.
- The costs are for an allowable type of ~~child-care~~ childcare.
- The costs are reasonable.

Eligible Child

To be eligible for the child-care deduction, the costs must be incurred for the care

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of a child ***under the age of 13***. The PHA 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 child-care deduction, the costs must not be reimbursed by another source.

HACP Policy:

The family (and the care provider) will be required to certify that the child-care expenses are not paid or reimbursed to the family from any source.

Pursuing an Eligible Activity

The PHA must verify that the family member(s) the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

HACP Policy:

Information to be gathered:

The HACP 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 HACP will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases, the HACP will request family-provided verification from the agency of the member's job seeking efforts to date and require the family to submit to the HACP any reports provided to the other agency.

In the event third-party verification is not available, the HACP will provide the family with a form on which the family member must record job search efforts. The HACP will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

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The HACP will request third-party documentation to verify that the person permitted to further his or her education by the ~~child-care~~childcare is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

Gainful Employment

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The HACP will seek third-party verification of the work schedule of the person who is permitted to work by the child-care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified. The documentation may be provided by the family.

Allowable Type of Childcare

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

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HACP Policy:

The HACP will verify that the type of childcare selected by the family is allowable, as described in Chapter 6 ~~(6-II-F)~~.

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The HACP will verify that the fees paid to the childcare provider cover only childcare costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The HACP will verify that the child-care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

Reasonableness of Expenses

Only reasonable child-care costs can be deducted.

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HACP Policy:

The actual costs the family incurs will be compared with the HACP's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

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If the family presents a justification for costs that exceed typical costs in the area, the HACP will request additional documentation, as required, to support a determination that the higher cost is appropriate.

See Exhibit 7-1 on next page:

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**EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS
FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]**

• All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA. • 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).

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• 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 <i>Federal Register</i>	

Chapter 8

HOUSING QUALITY NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE AND RENT REASONABLENESS DETERMINATIONS Notice PIH 2023-28]

STANDARDS AND RENT REASONABLENESS DETERMINATIONS [24 CFR 982 Subpart I and 24 CFR 982.507]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the PHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and PHA-established requirements. National Standards for the Physical Inspection of Real Estate (NSPIRE) regulations and standards no later than October 1, 2024. The inspection performance standards and procedures for conducting NSPIRE inspections must be included in the administrative plan [Notice PIH 2023-28].

All units must pass an HQS NSPIRE inspection prior to the approval of a lease (with some exceptions) and at least once every 24 months (or 36 months for small rural PHAs) during the term of the HAP contract, and at other times as needed, to determine that the unit meets HQS NSPIRE standards. HUD also requires PHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

Provided they meet certain requirements, HUD permits PHAs to establish some additional local requirements in their administrative plans. The use of the term NSPIRE in this plan refers to the combination of both HUD and PHA-established requirements. However, state and local codes, compliance is not part of the determination of whether a unit passes the NSPIRE standards.

This chapter explains HUD and PHA requirements related to housing quality physical inspections and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical NSPIRE standards required of units occupied by HCV and PBV-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 affirmative habitability requirements for all units and life-threatening conditions that must be addressed on an expedited basis corrected in 24 hours.

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Part II. The Inspection Process. This part describes the types of inspections the PHA will make and the steps that will be taken when units do not meet HQS.NSPIRE standards.

Part III. Rent Reasonableness Determinations. This part discusses the policies the PHA will use to make rent reasonableness determinations.

Special HQS.NSPIRE standards requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction. Special requirements for the PBV and RAD PBV programs (if applicable) are discussed in Chapters 17 and 18, respectively.

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PART I: ~~PHYSICAL~~NSPIRE STANDARDS

NSPIRE standards are published on HUD's NSPIRE website as well as in the NSPIRE Final Rule [FR Notice 5/1//2023].

8-I.A. ~~GENERAL HUD~~INSPECTABLE AREAS [24 CFR 5.703(a)(1) and 24 CFR 5.705(a)(2)]

NSPIRE defines the inspectable areas for inspection under the standards as inside, outside and unit. However, the inspection requirement for the HCV and PBV programs only applies to units occupied or to be occupied by HCV or PBV participants and common areas and exterior areas which either service or are associated with such units.

8-I.B. ~~AFFIRMATIVE HABITABILITY~~ REQUIREMENTS [24 CFR 5.703(b), (c), and (d)]

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal.
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Exhibit 8-1. Additional

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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 the PHA to enforce minimum HQS but also recognizes that certain judgments about the acceptability of the unit are left to the family. For example,

the PHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic appearance of the facilities is acceptable. Exhibit NSPIRE provides for minimum, or affirmative, habitability requirements for each area (unit, inside, outside). These areas must meet these requirements for habitability, which are listed in Exhibit 8-1.

The inside, outside and unit must be free of health and safety hazards that pose a danger to residents. Types of health and safety concerns include, but are not limited to carbon monoxide, electrical hazards, extreme temperature, flammable materials or other fire hazards, garbage and debris, handrail hazards, infestation, lead-based paint, mold, and structural soundness [24 CFR 5.703(e).

The NSPIRE Smoke Alarm Standard does not require that smoke alarms have a sealed battery; however, upon the effective date of the Public and Federally Assisted Housing Fire Safety Act of 2022 on December 29, 2024, sealed batteries will be required.

8-2 summarizes those items that are considered tenant preferences.

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I.C. Modifications to Provide Accessibility [24 CFR 100.203; Notice 2003-31; and Notice PIH 2014-02]

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Under the Fair Housing Act of 1988 an owner must must make reasonable accommodations in rules, policies, practices, or services if necessary for a person with disabilities to use the housing and not refuse the request of a family that contains a person with a disability to make necessary and reasonable

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modifications to the unit if such modification is necessary to afford the person with a disability full enjoyment of the premises. Such modifications are at the family's expense. The owner may where it is reasonable to do so, require restoration of the unit to its original condition (reasonable wear and tear excepted) 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].

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Modifications to units to provide access for a person with a disability must meet all applicable HQSNSPIRE requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the American Disabilities Act 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.

HACP Policy:

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Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the HACP for review.

8-I.BD. ADDITIONAL LOCAL REQUIREMENTS [24 CFR 5.705(a)(3) and Notice PIH 2023-28]

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The PHA may impose variations to the HQSNSPIRE standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to the HQS. ~~HUD approval is not required if the variations are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)] to NSPIRE standards and approved variations must be added to the administrative plan.~~

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HUD may approve inspection criteria variations if the variations apply standards in local housing codes or other codes adopted by the PHA or because of local climatic or geographic conditions. Acceptability criteria variations may only be approved by HUD if such variations either meet or exceed the performance requirements or significantly expand affordable housing opportunities for families assisted under the program.

HACP Policy:

The HACP has requested the additional local requirements for HUD-approved variations to NSPIRE standards.

Thermal Environment [HCV-GB p.10-7]

HACP must define a “healthy living environment” for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

HACP Policy:

The heating system must be in working condition and be capable of maintaining an interior temperature of 68 degrees Fahrenheit between October 1 and May 31.

When present, air conditioners must function properly, and control knobs must be functioning and readable. Grates or covers must also be present.

HACP Policy:

Detectors

Carbon Monoxide (CO2) detectors must be installed in accordance with California law (SB-183 - Carbon Monoxide Poisoning Prevention Act).

A. Carbon Monoxide devices must be installed in the following locations:

1. Outside each separate sleeping area in the immediate vicinity of the bedroom(s) in the dwelling unit,
2. On every level including the basement within which fuel-fired appliances are installed,
3. In dwelling units (single-family dwelling, duplex, condominium, or dwelling unit in a multiple-unit dwelling unit building) that have attached garages.

B. The Carbon Monoxide Detector must be operational at the time the tenant takes possession of the unit.

Smoke Detectors must be installed in accordance with the requirements of California Residential Building Code (R314).

A. Smoke alarms are to be installed in the following locations:

1. In each sleeping room.

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2. Outside each separate sleeping area in the immediate vicinity of the bedrooms. One alarm in the hallway outside each cluster of bedrooms is acceptable.

3. On each additional story of the dwelling, including basements and habitable attics but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

B. Effective July 1, 2015, all battery-operated smoke alarms MUST contain a non-removable battery that is rated to last 10 years. Owners should indicate the install date on the smoke alarm unit. If no date has been entered on the smoke alarm unit, then the date of manufacture indicated on the smoke alarm unit shall be used to determine if the unit is compliant.

Landlords cannot make the tenant responsible for testing or maintaining the smoke alarm. It is the tenant's responsibility to notify the owner if a smoke alarm or Carbon Monoxide Detector is deficient or inoperable.

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Garages and Storage Areas

Either attached or detached, the garage must be a part of the rental agreement.

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Owners are not permitted to store their belongings or rent the space **unless the garage has been properly converted into a separate dwelling unit as defined in the lease or rental agreement.** Existing HAP contracts wherein owners were allowed to store their items in detached garages or other storage structures will be grandfathered into compliance. New contracts effective after January 1, 2014 will be governed by this policy.

Additional Plumbing Requirements

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Water Heaters must meet the following State requirements:
California Health and Safety Code, Section 18211(a): Water heaters shall be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion. At a minimum, any water heater shall be secured in accordance with the California Plumbing Code pursuant to 17958.5.

Uniform Plumbing Code (UPC) 510.5: Water ~~heater~~heaters must be strapped with two seismic straps: one located within the top third of the water heater and one at the bottom third. The strap must be located at least 4" away from the water heater controls.

Utilities

In units where the tenant must pay for utilities, each unit must have separate metering device(s) for measuring utility consumption and direct billing by the utility service provider. The owner must be responsible for paying the utilities for units with centralized shared utility meters for their units. The owner is not permitted to request or require the tenant to reimburse them for utility use in units with centralized utility meters.

Apartment communities that have centralized utility meters and have a Consumption Calculation Plan or Third-Party Billing Contract must provide the HACP a copy of the plan at the time of the initial process or when a request for change is submitted following the initial term or the lease.

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Clarifications of HUD Requirements

HACP Policy:

As permitted by HUD, the HACP has adopted the following specific requirements that elaborate on HUD standards.

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Walls

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

Appliances

The oven heating elements and controls must work and all burners on the stove range must also work. All stove or range knobs must be present with readable temperature markings.

The family may choose to accept a microwave oven in place of a conventional oven, stove or range if the oven/stove/range are tenant supplied or if microwaves are furnished in both subsidized and unsubsidized units in the building or premises.

The family may choose to supply their own refrigerator, but it must be in proper working order per HQS Standards.

Any owner-supplied appliances in the unit at initial inspection shall be maintained in proper working order by the owner throughout the tenancy. Should an owner-supplied appliance malfunction, the

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~~owner has the right to either repair the appliance or remove the defective item. If the owner refuses to repair an appliance but rather chooses to remove the appliance, this shall constitute a reduction in services and result in a reduction in the unit rent comparable to the annual utility allowance for a comparable tenant provided appliance.~~

Bedrooms

~~Defined as a room used for sleeping (regardless of the type of room). At least one window is required. If the windows in the sleeping rooms are designed to be opened, at least one window must be openable and must be in proper working order.~~

~~Also required in a bedroom:~~

- ~~• Two working outlets or one working outlet and one permanently installed light fixture.~~
- ~~• A permanent or removable closet is required in all rooms considered bedrooms.~~

~~**Bedrooms in basements or attics are not permitted unless they meet local code requirements** (unit meets bedroom/bathroom definition from Contra Costa County Tax Assessors Office) as well as HQS Standards. They must have adequate ventilation with emergency exit capability.~~

Windows

~~Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.~~

~~Windows must be weather-stripped as needed to ensure a weather-tight seal.~~

~~Window screens must be in good condition (applies only if screens are present).~~

Doors

~~All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold. All door jambs must be intact. Door jambs must have metal striker plates installed to maintain the integrity of the jam and function of the local mechanism. Each main swinging entry door of dwelling unit must have an operable single cylinder dead bolt lock. These doors include any exterior that will allow access to the unit (front door, door off a kitchen to rear yard, the door from the unit to a garage and any doors that allow direct access to the unit).~~

Double key deadbolt locks are prohibited on any door in the unit. Egress doors shall be readily openable without the use of a key or special knowledge or effort.

All interior doors must have no holes, have all trim intact, **and be openable 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 for a "finished look." Vinyl base shoe is permitted.

Sinks

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All sinks must have functioning stoppers.

Toilets

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

Unit Exterior

All rental units must have a street number and unit number or letter clearly labeled and visible from the street.

Each rental unit must have its own properly labeled official mailbox where the U.S. Postal Service officially delivers mail. **The exclusive use of the mailing address of the unit is for the family and approved family members as described in Chapter 3.I.J – Guests.**

Exterior fences: Owners may be requested to install, repair or remove a fence if a safety or security hazard is present and/or an area of the property must be separated for security reasons.

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.

8-I.CE. LIFE-THREATENING CONDITIONS [24 CFR 982.404(a); FR DEFICIENCIES [Notice 1/18/17PIH 2023-28]

HUD ~~requires~~previously required the PHA 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 in the administrative plan. The NSPIRE standards now describe those conditions which are considered life-threatening conditions and must be corrected within 24 hours of PHA notification.

:

The following are a list of life-threatening deficiencies under NSPIRE:

<u>Inspectable Item</u>	<u>Deficiency</u>
<u>Call-for-Aid System</u>	<u>System is blocked, or pull cord is higher than 6 inches off the floor.</u>
	<u>System does not function properly</u>
<u>Carbon Monoxide Alarm</u>	<u>Carbon monoxide alarm is missing, not installed, or not installed in a proper location.</u>
	<u>Carbon monoxide alarm is obstructed.</u>
	<u>Carbon monoxide alarm does not produce an audio or visual alarm when tested.</u>
<u>Chimney</u>	<u>A visually accessible chimney, flue, or firebox connected to a fireplace or wood-burning appliance is incomplete or damaged such that it may not safely contain fire and convey smoke and combustion gases to the exterior.</u>
	<u>Chimney exhibits signs of structural failure.</u>
<u>Clothes Dryer Exhaust Ventilation</u>	<u>Electric dryer transition duct is detached or missing.</u>
	<u>Gas dryer transition duct is detached or missing.</u>
	<u>Electric dryer exhaust ventilation system has restricted airflow.</u>
	<u>Dryer transition duct is constructed of unsuitable material.</u>
	<u>Gas dryer exhaust ventilation system has restricted airflow.</u>
<u>Dorr – Entry</u>	<u>Entry door is missing.</u>
<u>Door – Fire Labeled</u>	<u>Fire labeled door is missing.</u>

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<u>Inspectable Item</u>	<u>Deficiency</u>
<u>Egress</u>	<u>Obstructed means of egress.</u>
	<u>Sleeping room is located on the third floor or below and has an obstructed rescue opening.</u>
	<u>Fire escape is obstructed.</u>
<u>Electrical – Conductor, Outlet, and Switch</u>	<u>Outlet or switch is damaged.</u>
	<u>Exposed electrical conductor.</u>
	<u>Water is currently in contact with an electrical conductor.</u>
<u>Electrical – Service Panel</u>	<u>The overcurrent protection device is damaged.</u>
<u>Exit Sign</u>	<u>Exit sign is damaged, missing, obstructed, or not adequately illuminated.</u>
<u>Fire Escape</u>	<u>Fire extinguisher is damaged or missing.</u>
<u>Fire Extinguisher</u>	<u>Fire extinguisher pressure gauge reads over or under-charged.</u>
	<u>Fire extinguisher service tag is missing, illegible, or expired.</u>
	<u>Fire extinguisher is damaged or missing.</u>
<u>Flammable and Combustible Items</u>	<u>Flammable or combustible item is on or within 3 feet of an appliance that provides heat for thermal comfort or a fuel-burning water heater; OR</u> <u>Improperly stored chemicals.</u>
<u>Guardrail</u>	<u>Guardrail is missing or not installed.</u>
	<u>Guardrail is not functionally adequate.</u>
<u>Heating, Ventilation, and Air Conditioning (HVAC)</u>	<u>The inspection date is on or between October 1 and March 31 and the permanently installed heating source is not working or the permanently installed heating source is working and the interior temperature is below 64 degrees Fahrenheit.</u>
	<u>Unvented space heater that burns gas, oil, or kerosene is present.</u>
	<u>Combustion chamber cover or gas shutoff valve is missing from a fuel burning heating appliance.</u>
	<u>Fuel burning heating system or device exhaust vent is misaligned, blocked, disconnected, improperly</u>

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<u>Inspectable Item</u>	<u>Deficiency</u>
	<u>connected, damaged, or missing.</u>
<u>Leak – Gas or Oil</u>	<u>Natural gas, propane, or oil leak.</u>
<u>Mold-like Substance</u>	<u>Presence of mold-like substance at extremely high levels is observed visually.</u>
<u>Smoke Alarm</u>	<u>Smoke alarm is not installed where required.</u>
	<u>Smoke alarm is obstructed.</u>
	<u>Smoke alarm does not produce an audio or visual alarm when tested.</u>
<u>Sprinkler Assembly</u>	<u>Sprinkler head assembly is encased or obstructed by an item or object that is within 18 inches of the sprinkler head.</u>
	<u>Sprinkler assembly component is damaged, inoperable, or missing and it is detrimental to performance.</u>
	<u>Sprinkler assembly has evidence of corrosion.</u>
	<u>Sprinkler assembly has evidence of foreign material that is detrimental to performance.</u>
<u>Structural System</u>	<u>Structural system exhibits signs of serious failure.</u>
<u>Toilet</u>	<u>Only 1 toilet was installed, and it is missing.</u>
<u>Water Heater</u>	<u>Chimney or flue piping is blocked, misaligned, or missing.</u>
	<u>Gas shutoff valve is damaged, missing, or not installed.</u>

However, PHAs may add additional deficiencies which the PHA considers life-threatening provided they are described in the administrative plan.

HACP Policy:

The HACP Policy:

In addition to those listed under the NSPIRE standards, the following are considered life-threatening conditions:

- Any condition that jeopardizes the security of the unit
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling.
- Natural or LP gas or fuel oil leaks

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- A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking or a strong odor is detected with potential for explosion or fire or that results in a health risk if inhaled.
- Any electrical problem or condition that could result in shock or fire.
- A light fixture readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed.
- A light fixture is hanging by its wires.
- 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.
- A receptacle (outlet) or switch is missing or broken, and electrical connections or wires are exposed
- 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.
- A cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections.
- Any nicks, abrasions, or fraying of the insulation that exposes conducting wire.
- Exposed bare wires or electrical connections.
- Any condition that results in openings in electrical panels or electrical control device enclosures
- Water leaking or ponding near any electrical device.
- Any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition.
- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit between October 1 and May 31st.
- Utilities not in service, including no running hot water.
- Conditions that present the imminent possibility of injury.
- Obstacles that prevent safe entrance or exit from the unit.
- Any components that affect the function of the fire escape are missing or damaged.

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- ~~Stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency.~~
- ~~The building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency.~~
- ~~Absence of a functioning toilet in the unit~~
- ~~Inoperable or missing smoke detectors~~
- ~~Missing or inoperable carbon monoxide detector~~
- ~~Missing, damaged, discharged, overcharged, or expired fire extinguisher (where required)~~
- ~~Gas/oil-fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney venting~~
- ~~The chimney or venting system on a fuel-fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting or gases.~~
- ~~A gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside.~~
- ~~A fuel-fired space heater is not properly vented or lacks available combustion air.~~
- ~~A non-vented space heater is present.~~
- ~~Safety devices on a fuel-fired space heater are missing or damaged.~~
- ~~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 gas.~~
- ~~A gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside.~~
- ~~A fuel-fired space heater is not properly vented or lacks available combustion air~~
- ~~A non-vented space heater is present.~~
- ~~Safety devices on a fuel-fired space heater are missing or damaged.~~
- ~~Deteriorating paint as defined at 24 CFR 35.110 in a unit built before 1978 that is to be occupied by a family with a child under six years of age if it would prevent the family from moving into the unit.~~

~~If an owner fails to correct life-threatening conditions as required by the HACP, the HACP will enforce the HQS in accordance with HUD requirements. See 8-II-G.~~

~~If a family fails to correct a family-caused life-threatening condition as required by the HACP, the HACP will enforce the family obligations. See 8-II.H.~~

~~The owner will be required to repair an inoperable smoke detector unless the HACP determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.~~

8-I.~~DE~~. 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 appliances owned by the family.
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear that results in.

~~If a breach of family fails to correct a family-caused life-threatening condition as required by the PHA, the PHA will enforce the family obligations. See 8-II.H.~~

HACP Policy:

- ~~HQS. "Normal Damages beyond ordinary wear and tear" is defined as items will be considered to be damages which could not be charged assessed against the tenant's security deposit under state law or in court practice.~~

Owner Responsibilities

The owner must maintain the unit in accordance with NSPIRE regulations and standards. The owner is not responsible for a breach of the NSPIRE that is not caused by the owner, and for which the family is responsible (as provided in 24 CFR 982.404(b) and 982.551(c)).

HACP Policy:

The owner is responsible for all ~~HQS~~NSPIRE violations not listed as a family responsibility above, even if the violation is caused by the ~~family's~~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.

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The owner will be required to repair an inoperable smoke detector unless the PHA 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.

If an owner fails to correct life-threatening conditions as required by the PHA, the PHA will enforce the NSPIRE standards in accordance with HUD requirements. See 8-II-G.

8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ELEVATED BLOOD~~G~~. LEAD-LEVEL-BASED PAINT

PHAs and owners must comply with the requirements and timelines in 24 CFR Part 35 Subpart M—Tenant-Based Rental Assistance and Subpart H—Project-Based Assistance. PHAs and owners are reminded that any deteriorated paint in target housing, or other lead-based paint hazard identified through a lead-based paint risk assessment or lead-based paint inspection is considered a violation of NSPIRE standards.

For the HCV program, Subpart M applies to units where a child under age six resides or is expected to reside, common areas that service that unit, and exterior painted surfaces associated with that unit or common areas. For project-based programs, Subpart H applies to assisted units and common areas of the property regardless of whether a child under age six resides or is expected to reside in the unit. NSPIRE does not alter any of the lead-based paint requirements in Part 35 for these programs.

Special Requirements for Children with Elevated Blood Lead Level [24 CFR 35.1225; FR Notice 1/13/17; Notice PIH 2017-13]

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 ~~six~~ years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, the PHA must complete an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider.

The Lead Safe Housing Rule & Lead Disclosure Rule (LSHR) threshold for action pursuant to 24 CFR 35 is as follows:

- Confirmed EBLL $\geq$ 5 μ g/dL (micrograms/deciliter)

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- Notification by public health department or other medical health care provider
- If reported by family or other source, PHA should attempt to confirm
- Aligned with Centers for Disease Control and Prevention (CDC) reference range of 5 µg/dL

The risk assessment environmental investigation must be completed in accordance with program requirements, and the result of the risk assessment environmental investigation must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from HACP, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQSN SPIRE and HACP will take action in accordance with Section 8-II.G.

PHA reporting requirements, and data collection and record keeping responsibilities related to children with an elevated blood lead level are discussed in Chapter 16.

8-I.FH. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.401, 24 CFR 982.403] 5.703(d)

A dwelling unit Units assisted under the HCV or PBV programs must:

- Provide adequate space and security for the family.
- Have have at least one bedroom or living/sleeping room for each two persons.

A unit that does not meet these HQS space standards is defined as overcrowded.

A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. A bedroom or living/sleeping room must have at least 10-6]. Each habitable room must have two working outlets or one working outlet and a permanent light. HUD defines a *habitable room* as a room in a building for living, sleeping, eating, or cooking, but excluding bathrooms, toilet rooms, closets, hallways, storage or utility spaces, and similar areas [FR Notice 5/11/23].

- One window

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- ~~Two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets)~~

If the PHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

The PHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- **Initial Inspections.** The PHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.
- **Annual/Biennial Inspections.** HUD requires the PHA to inspect each unit under lease at least annually or biennially, (or triennially for small rural PHAs as defined in 24 CFR 982.305(b)(2), depending on the PHA's Policy: 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 NSPIRE standards.
- **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 inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with the HQS NSPIRE standards.

Inspection of PHA-Owned Units [24 CFR 982.352(b)]

The PHA must obtain the services of an independent entity to perform all HQS NSPIRE inspections in cases where an HCV family is receiving assistance in a PHA-owned unit. A PHA-owned unit is defined as a unit in a project that is one of the following categories: (1) Owned by a PHA. (2) Owned-owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity whollysubstantially controlled by the PHA. (3) Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing

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member or general partner. A “controlling interest” is— (A) Holding 50 percent or more of the stock of any corporation; (B) Having the power to appoint 50 percent or more of the members of the board of directors of a non-stock corporation (such as a non-profit corporation); (C) Where 50 percent or more of the members of the board of directors of any corporation also serve as directors, officers or employees of the PHA; (D) Holding 50 percent or more of all managing member interests in an LLC; (E) Holding 50 percent or more of all general partner interests in a partnership; or (F) Equivalent levels of control in other organizational structures. 8-13 Administrative Plan— HCV Program Revised 12/13/2022 Units in which PHAs have a different ownership interest are no longer considered to be owned by the PHA. In order to be considered a “PHA-Owned” unit as described above, the PHA must have ownership interest in the building itself, not simply the land beneath the building. A PHA-owned unit is defined as a unit in a project that is one of the following categories:

(1) Owned by a PHA.

(2) Owned by an entity wholly controlled by the PHA.

(3) Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner.

A “controlling interest” is—

(A) Holding 50 percent or more of the stock of any corporation;

(B) Having the power to appoint 50 percent or more of the members of the board of directors of a non-stock corporation (such as a non-profit corporation);

(C) Where 50 percent or more of the members of the board of directors of any corporation also serve as directors, officers or employees of the PHA;

(D) Holding 50 percent or more of all managing member interests in an LLC;

(E) Holding 50 percent or more of all general partner interests in a partnership; or

(F) Equivalent levels of control in other organizational structures.

1. The independent agency must communicate the results of each inspection to the family and the PHA. The independent agency must be approved by HUD and may be the unit of general local government for the HACPPHA jurisdiction (unless the HACPPHA is itself the unit of general local government or an agency of such government).

For information on the inspection of PHA-owned units in the PBV program, see Chapters 17 and 18.

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Inspection Costs [Notice PIH 2016-05]; 24 CFR 5.705(d)]

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The HACP may not charge the family for unit inspections or re-inspections [24 CFR 982.405(e)]. In the case of inspections of PHA-owned units, the HACP may compensate the independent agency from ongoing administrative fee for inspections performed. The HACP and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, the PHA may charge a reasonable fee to owners for reinspection in two situations:

- 1) When the owner notifies the PHA that a repair has been made but the deficiency has not been corrected, and
- 2) when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a reinspection.

The owner may not pass the cost of a reinspection fee to the family. Reinspection fees must be added to the PHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

HACP Policy:

The HACP will not charge a fee for failed re-inspections.

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Remote Video Inspections (RVIs) [Notice PIH 2020-31]

As an alternative to some or all on-site inspections, the PHA may, but is not required to, perform NSPIRE inspections from a remote location using video streaming technology and a proxy at the inspection site. Since there may be some circumstances in which the application of technology provides insufficient information or evidence to allow the PHA to make appropriate determinations about whether a condition violates NSPIRE standards, Notice PIH 2020-31 requires that if a PHA chooses to implement RVIs, the PHA should have policies and procedures in place to address such limitations.

HACP Policy:

The PHA will not conduct any inspection using RVI.

Notice and Scheduling

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The family must allow the HACP to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

HACP Policy:

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 5:00 p.m. Generally, inspections will be conducted on business days only. In the case of a life-threatening emergency, the PHA will give as much notice as possible, given the nature of the emergency.

Owner and Family Inspection Attendance

HUD permits the PHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

HACP Policy:

When a family occupies the unit at the time of inspection an adult family member must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the HACP 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.

8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]

Initial Inspections Approving Units [FR Notice 1/18/17; Notice PIH 2017-20; and 24 CFR 982.406]

HUD regulations require that units assisted under the HCV program be inspected to determine that the units meet NSPIRE standards before the PHA approves assisted tenancy. However, while the PHA is required to conduct an inspection prior to approving assisted tenancy, PHAs have two options for bringing units under HAP contract (or, in the case of PBV, approving occupancy and the execution of a lease) more quickly. The PHA may, but is not required to, approve assisted tenancy and start HAP if the unit fails HQS:

- Fails the initial inspection, but only if the no life-threatening deficiencies are identified are non-life threatening. Further, the PHA may, but is not required to, authorize occupancy if a unit passed.
- Passed an alternative inspection in the last 24 months.

Otherwise, if neither of the above provisions are adopted, the PHA must determine that the unit the family selects meets NSPIRE standards prior to approving tenancy.

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HACP Policy:

- The unit must pass the HQSinitial inspection on or before the effective date of the HAP contract.
- The HACPPHA will not rely on alternative inspections and will conduct an HQSinitial inspection for each unit prior to executing a HAP contract with the owner.

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Timing of Initial Inspections [24 CFR 982.395(b)(2)(i)]

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HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQSNSPIRE standards, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For PHAs with 1,250 or more budgeted units, to the extent practicable, such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

HACP Policy:

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The HACP will complete the initial inspection, determine whether the unit satisfies HQSNSPIRE standards, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA).

Inspection Results and Reinspections

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For new units proposed for the HCV program, life-threatening deficiencies must be resolved before the HAP contract is executed and the family moves into the unit.

HACP Policy:

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If any HQS-violationsdeficiencies are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the HACP for good cause. The HACP will reinspect the unit within 5 business days of the date the owner notifies the HACP that the required corrections have been made.

Where applicable, HACP may verify that the repair has been completed using alternative methods such as virtual inspection with tenant and owner-signed certification, pictures and other video evidence and/or contractor invoices and receipts of payment that document the work completed,

If the time period for correcting the deficiencies (or any HACP -approved extension) has elapsed, or the unit fails HQSNSPIRE at the time of the

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reinspection, the HACP will notify the owner and the family that the unit has been rejected and that the family must search for another unit.

The HACP may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new RTA after the owner has made repairs, if they are unable to locate another suitable 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.

HACP Policy:

~~If utility~~Utility service ~~is not~~must be available for testing at the time of the initial inspection, ~~the HACP will allow the utilities to be placed in service after the unit has met all other HQS requirements. The HACP will reinspect the unit to confirm that utilities are operational before the HAP contract is executed by the HACP.~~

Appliances [Form HUD-52580]

HACP Policy:

If the family is responsible for supplying the stove and/or refrigerator, the HACP will allow the stove and refrigerator to be placed in the unit after the unit has met all other ~~HQS~~NSPIRE requirements. The required appliances must be in place before the HAP contract is executed by the HACP. The HACP will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

8-II.C. ANNUAL/BIENNIAL ~~HQS~~ INSPECTIONS [24 CFR 982.405 and 982.406; Notice PIH 2016-05]

HUD requires the PHA to inspect each unit under HAP contract at least biennially (or triennially for small rural PHAs), to confirm that the unit still meets NSPIRE standards. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.

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HACP Policy:

Each unit under HAP contract must be inspected within **24 months** of the last full **HQS** inspection.

The HACP will not rely on alternative inspection standards.

Scheduling the Inspection

Each unit under HAP contract must be inspected within 24 months of the last full **HQS** inspection after July 1, 2013. If no inspection is conducted by July 1, 2013, an inspection must be completed within 12 months from the last full **HQSN SPIRE** inspection. Thereafter, the unit must be inspected no later than **24 months from the last inspection date**.

HACP Policy:

If an adult family member cannot be present on the scheduled date, the family should request that the HACP reschedule the inspection. The HACP and family will agree on a new inspection date that generally should take place within **10 business days** of the originally scheduled date. The HACP may schedule an inspection more than **10 business days** after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the HACP will automatically schedule a second inspection. If the family misses two scheduled inspections without approval, the HACP will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8-II.D. SPECIAL INSPECTIONS [24 CFR 982.405(g)]

If a participant **family** or government official reports a life-threatening condition which the owner would be required to repair within 24 hours, the PHA must inspect the unit within 24 hours of notification. If the reported condition is not life-threatening, the PHA must inspect the unit within 15 days of notification.

HACP Policy:

During a special inspection, the HACP generally will inspect only those deficiencies that were reported writing to the owner and given the owner a reasonable period of time to respond. The HACP Staff may request a copy of the written notice to ensure the landlord has been notified and been given the opportunity to make repairs. The HACP reserves the right to

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waive this requirement when necessary. HACP will complete a special inspection for any reported life-threatening conditions. During the inspection, the inspector will inspect the reported items, however, the inspector will record any additional HQSNPSIRE deficiencies that are observed and will require the responsible party to make the necessary repairs. Pictures may be taken during the inspection.

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the HACP may elect to conduct a full annual inspection.

8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); HCV GB, p. 10-32]

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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 HQSNPSIRE standards.

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.

8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT

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Correction Timeframes

Each deficiency is identified in the NPSIRE standards as either life-threatening, severe, moderate, or low.

For units under HAP contract, life-threatening deficiencies must be corrected within 24 hours after notice has been provided. All other non-life-threatening deficiencies (severe and moderate) must be corrected within 30 days (or a PHA-approved extension) after notice has been provided. If low deficiencies are present in a unit, these deficiencies result in a pass and would only be noted by the inspector for informational purposes.

Notification of Corrective Actions

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The owner and the family will be notified in writing of the results of all inspections.

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When an inspection identifies ~~HQS failures~~ deficiencies, the PHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

HACP Policy:

When life-threatening ~~conditions~~ deficiencies are identified, the HACP 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 HACP's notice.

When failures that are ~~not life-threatening~~ severe or moderate are identified, the HACP will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction. If low deficiencies are identified, these deficiencies will only be noted for informational purposes.

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 HACP approved extension), the owner's HAP will be abated in accordance with

HACP Policy:

(see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any HACP approved extension, if applicable) the family's assistance will be terminated in accordance with HACP Policy (see Chapter 12).

Extensions

For ~~conditions that are~~ life-threatening deficiencies, the **HACP cannot grant an extension to the 24-hour** corrective action period. For conditions that are ~~not life-threatening~~ severe or moderate, the HACP may grant an exception to the required time frames for correcting the violation, if the PHA determines that an extension is appropriate ~~[24 CFR 982.404].~~

HACP Policy:

Extensions will be granted in cases where the HACP has determined that the owner has made a good faith effort to correct the deficiencies but has been unable to complete the work within the time frame for reasons beyond the owner's control. Reasons may include, but are not limited to:

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- 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 HACP will not grant oral extensions. Requests for extensions must be made in writing, however emails, faxes and letters will be accepted. Must be received no less than 7 calendar days before the scheduled inspection.

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.

Re-inspections

HACP Policy

The HACP will conduct a reinspection immediately following the end of the corrective period, or any HACP approved extension.

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, the HACP 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 HACP policies. If the HACP is unable to gain entry to the unit in order to conduct the scheduled reinspection, the HACP 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.

The PHA will not accept self-certification of repairs. However, photos or other documentation of repairs may be accepted in lieu of a reinspection.

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8-II.G. ENFORCING OWNER COMPLIANCE

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If the owner fails to maintain the dwelling unit in accordance with ~~HQS~~NSPIRE standards, the HACP must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement

If an owner fails to correct ~~HQS~~ deficiencies by the time specified by the HACP, HUD requires the HACP to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of ~~HQS failures~~deficiencies that are the family's responsibility.

HACP Policy:

The HACP will make all HAP abatements effective the first day of the month following the expiration of the HACP specified correction period (including any extension).

The HACP will inspect abated units within **5 business days** of the owner's notification that the work has been completed. Payment will resume effective on the earlier of the day the unit passes inspection or the date the correction was reported completed. Where applicable, HACP may verify that the repair has been completed using alternative methods such as virtual inspection with tenant and owner-signed certification, pictures and other video evidence and/or contractor invoices and receipts of payment that document the work completed.

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

The PHA must decide how long any abatement period will continue before the HAP contract will be terminated. The PHA 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. The PHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

HACP Policy:

The maximum length of time that HAP may be abated is **90 days**. However, if the owner completes corrections and notifies the HACP before the termination date of the HAP contract, the HACP 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.

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Reasonable notice of HAP contract termination by the HACP is **30**
calendar days.

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8-II.H. ENFORCING FAMILY COMPLIANCE **WITH HQS** [24 CFR 982.404(b)]

Families are responsible for correcting any **HQS-violations**deficiencies listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the PHA (and any extensions), the PHA 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.

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PART III: RENT REASONABLENESS [24 CFR 982.507]

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8-III.A. OVERVIEW

Except in the case of certain low-income housing tax credits (LIHTC-) and HOME-assisted units, no HAP contract can be approved until the PHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

PHA-Owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a PHA-owned unit, the HACP must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A PHA-owned unit is defined as a unit that in a project that is one of the following categories:

- (1) Owned by a PHA.
- (2) Owned by an entity wholly controlled by the PHA.
- (3) Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general

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A “controlling interest” is—

- (A) Holding 50 percent or more of the stock of any corporation;
- (B) Having the power to appoint 50 percent or more of the members of the board of directors of a non-stock corporation (such as a non-profit corporation).
- (C) Where 50 percent or more of the members of the board of directors of any corporation also serve as directors, officers or employees of the PHA.
- (D) Holding 50 percent or more of all managing member interests in an LLC.
- (E) Holding 50 percent or more of all general partner interests in a partnership; or
- (F) Equivalent levels of control in other organizational structures.

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Units in which PHAs have a different ownership interest are no longer considered to be owned by the PHA.

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In order to be considered a “PHA-~~Owned~~” unit as described above, the PHA must have ownership interest in the building itself, not simply the land beneath the building.

The independent agency must communicate the results of the rent reasonableness determination to the family and the HACP. The independent agency must be approved by HUD and may be the unit of general local government for the HACP jurisdiction (unless the HACP is itself the unit of general local government or an agency of such government).

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-Initiated Rent Determinations

The PHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The HACP (or independent agency in the case of PHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the HACP must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent ~~HQS~~NSPIRE inspection have been corrected.

HACP Policy:

Initial Rents

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. In evaluating the proposed rents in comparison to other units on the premises the HACP will consider unit size and length of tenancy in the other units.

The HACP will determine whether the requested increase is reasonable within **30 calendar days** of receiving the request from the owner. The owner will be notified of the determination in writing.

Rent Increases

For rent increase requests after initial lease-up, the HACP may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units.

The HACP will determine whether the requested increase is reasonable within **30 calendar days** of receiving the request from the owner. The owner will be notified of the determination in writing. All approved rent adjustments will be effective the first of the month following:

- a) 60 calendar days after the postmark date or fax time-date confirmation of the owner's request or
- b) the date the unit passed its latest annual inspection or
- c) on the date specified by the owner, whichever is later.

If the request is incomplete or incorrect the owner will be notified within 15 calendar days and given an opportunity to resubmit the request. The effective date will be the first of the month following a) 60 calendar days after the postmark date or fax time-date confirmation of the owners **corrected request**, or b) the date the unit passed its latest annual inspection or c) on the date specified by the owner, whichever is later.

All ~~rents~~rent adjustments will be effective the first of the month following 60 days after the HACP's receipt of the owner's request or on the date specified by the owner, whichever is later.

PHA- and HUD-Initiated Rent Reasonableness Determinations

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HUD requires the HACP to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the fair market rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the PHA to make a determination at any other time. The PHA may decide that a new determination of rent reasonableness is needed at any time.

HACP Policy:

In addition to the instances described above, the HACP will make a determination of rent reasonableness at any time after the initial occupancy period if:

- 1) the HACP determines that the initial rent reasonableness determination was in error; or
- 2) the HACP determines that the information provided by the owner about the unit or other units on the same premises was incorrect. For purposes of determining rent reasonableness, information from the Contra Costa County Tax Assessors office or the City's GIS system may be used to verify the unit information. The description of the unit listed with the tax assessors' office may be the information used.

If there is a discrepancy, the Owner/Property Manager must contact the Contra Costa County Tax Assessors Office at 925-313-7400 to report inconsistencies or errors in description. Often when properties have had repairs or additions, the normal process involves issuance of permits for completion of work. Upon completion, the permit is forwarded to the County Assessor's office for review, reassessment and correction.

Low Income Housing Tax Credits (LIHTC)- and HOME-Assisted Units [24 CFR 982.507(c)]

For units receiving LIHTCs or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: 1) the reasonable rent as determined from the rent comparability study; or 2) the payment standard established by the PHA for the unit size involved.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. The PHA may use these factors to make upward or downward adjustments to the rents of comparable units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms.
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made.
- Amenities, services, and utilities included in the rent.

Units that Must Not Be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that ~~imposes~~impose rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

Note: Notice PIH 2011-46, issued August 17, 2011, provides further guidance on the issue of what constitutes an assisted unit.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the HACP 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 the HACP information regarding rents charged for other units on the premises.

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8-III.D . PHA RENT REASONABLENESS METHODOLOGY

How Market Data Is Collected

HACP Policy

HACP contracts with **AffordableHousing.com** previously known as GoSection 8 to collect and maintain data on market rents in HACP's jurisdiction. Information sources used by **AffordableHousing.com** include, but are not limited to, newspapers, internet listing services, realtors, market surveys and inquiries of owners and property managers.

All HUD required comparison factors are maintained in the AffordableHousing.com rent comparable database.

AffordableHousing.com is updated on an ongoing basis and rent information that is more than 12 months old is no longer accessible in the database.

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How Rents Are Determined

HACP Policy

The **AffordableHousing.com** Rent Reasonableness Software utilizes a unit-to-unit comparison, similar to real estate appraisal, where a direct comparison is made between the rent for the subject HCV assisted unit and the rent for unassisted comparable units. Comparable units are drawn from a database of current, real-time market data maintained by the vendor. After identifying specific units to use as comparables based on location, unit type and characteristics, **AffordableHousing.com** provides similarity and credibility scores and market rent data to determine if the rent is supported by the market data.

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AffordableHousing.com also employs unit-to-market principles to assist staff in making market-based adjustments to rental values. **The blended approach** - identifying comparable units that are the closest possible match to the proposed HCV assisted unit and then adjusting rental values to address any remaining critical differences that impact market rent - ensures the results are grounded in accurate market-based rental values.

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The **AffordableHousing.com** Database will return the three units whose similarity and credibility score most closely matches the subject unit. All comparables used to evaluate the rent must have **a similarity rating of 90 % or more and a credibility rating of 70 % or more**, when available.

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If three comparables that have similarity ratings of 90% or more and credibility ratings of 70 % or more cannot be found, then the Housing Manager must approve the rent reasonableness certification.

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The subject unit rent must be supported by the average of three comparables to be approved.

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: $\$500 \times 11 \text{ months} = 5500 / 12 \text{ months} = \text{actual monthly rent of } \$458$.

For properties where the owner has unassisted units at market rent in the same building, the unassisted unit rents will also be considered for rent reasonableness determination. 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 HACP may develop a range of prices for comparable units by bedroom size within defined market areas.

The HACP will notify the owner of the rent the PHA can approve based upon its analysis of rents for comparable units. If the comparable rent is lower than that requested by the owner, the owner may be requested to submit information about other comparable units in the market area. HACP Staff will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within 5 business days of HACP's request for information or the owner's request to submit information.

If the comparable rent is still lower, HACP staff will ask the owner if he or she is willing to accept the comparable rent.

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS AFFIRMATIVE HABITABILITY REQUIREMENTS

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

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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 openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

Water Supply

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

Lead-Based Paint

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero-bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed;
- Provide all prospective families with "Protect Your Family from Lead in Your Home";
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the PHA;
- Notify tenants each time such an activity is performed.

Conduct all work in accordance with HUD safe practices.

Affirmative Habitability Requirements: Inside

Must include at least 1 battery-operated or hard-wired smoke detector, in proper working condition, on each level of the property.

Must meet or exceed the carbon monoxide detection standards set by the Secretary through *Federal Register* notification.

Any outlet installed within 6 feet of a water source must be GFCI protected.

Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.

Must have permanently mounted light fixtures in any kitchens and each bathroom.

May not contain unvented space heaters that burn gas, oil or kerosene.

Affirmative Habitability Requirements: Outside

Any outlet installed within 6 feet of a water source must be GFCI-protected.

Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.

Affirmative Habitability Requirements: Unit

Must have hot and cold running water in the bathroom and kitchen, including an adequate source of safe drinking water in the bathroom and kitchen.

Must include its own bathroom or sanitary facility that is in proper operating condition and usable in privacy. It must contain a sink, a bathtub or shower, and an interior flushable toilet.

Must have at least one battery-operated or hard-wired smoke detector, in proper working condition, in the following locations:

- On each level of the unit AND
- Inside each bedroom or sleeping area AND
- With 21 feet of any door to a bedroom measured along a path of travel AND
- Where a smoke detector is installed outside a bedroom is separated from an adjacent living area by a door, a smoke detector must also be installed in the living area side of the door.

If the unit is occupied by a hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons.

Must have a living room and a kitchen area with a sink, cooking appliance, refrigerator, food preparation area and food storage area.

Must have two working outlets or one working outlet and one permanent light fixture within all habitable rooms.

Must have a permanently mounted light fixture in each bathroom and in the kitchen.

Outlets within 6 feet of water source must be GFCI-protected.

Must have permanently installed heating source.

No units may contain unvented space heaters that burn gas, oil or kerosene.

Must have a guard rail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.

Must have at least one bedroom or living/sleeping room for each two persons.

- ~~As part of ongoing maintenance ask each family to report deteriorated paint.~~
- ~~Maintain covered housing without deteriorated paint if there is child under six in the family~~

~~For units occupied by elevated blood lead level (lead poisoned) children under six years of age, an environmental investigation must be conducted (paid for by 89-41~~

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the PHA). If lead hazards are identified during the environmental investigation, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

Smoke Detectors

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Hazards and Health/Safety

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

**EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS
RELATED TO HOUSING QUALITY**

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- ~~Housing Choice Voucher Guidebook, Chapter 10.~~
- ~~HUD Housing Inspection Manual for Section 8 Housing~~
- ~~HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)~~

~~Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.~~

- ~~Sanitary Facilities. The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.~~
- ~~Food Preparation and Refuse Disposal. The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.~~
- ~~Space and Security. The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.~~
- ~~Energy conservation items. The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.~~

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- ~~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.~~

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- ~~(6) Structure and Materials. Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.~~
 - ~~(7) Indoor Air. Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present, they must be in good condition.~~
 - ~~(8) Sanitary Conditions. The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.~~
 - ~~(9) Neighborhood conditions. Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.~~
- ~~Families have no discretion with respect to lead-based paint standards and smoke detectors.~~

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Chapter 9

GENERAL LEASING POLICIES

INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval (RTA) to execution of the HAP contract.

In order for the 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, the 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 the PHA and meet the ~~Housing Quality National Standards (HQS)~~ for the Physical Inspection of Real Estate (NSPIRE) [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, approved by the PHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

9-I.A. TENANT SCREENING

The PHA 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)].

The PHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the PHA'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, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The PHA must also inform the owner or manager or his/her rights and obligations under the Violence against Women Act ~~of 2013~~ (VAWA) [24 CFR 5.2005(a)(2)].

The PHA must provide the owner with the family's current and prior address (as shown in the PHA records) and the name and address (if known to the PHA) of the landlord at the family's current and prior address [24 CFR 982.307(b)(1)].

The PHA is permitted, but not required, to offer the owner other information in the PHA's possession about the tenancy history or drug trafficking of family members [24 CFR 982.307(b)(2)].

The PHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

The PHA may not disclose to the owner any confidential information provided by the family in response to a PHA request for documentation of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking except at the written request or with the written consent of the individual providing the documentation [see 24 CFR 5.2007(b)(4)].

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HACP Policy:

The HACP will not screen applicants for family behavior or suitability for tenancy.

The HACP will not provide additional screening information to the owner.

The HACP will screen only for program eligibility & compliance.

9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the PHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the PHA:

- Completed RTA – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the PHA 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 the PHA 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].

HACP Policy:

The RTA must be signed by both the family and the owner.

The owner may submit the RTA on behalf of the family.

Completed RTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, by mail, email or by fax.

The family may not submit, and the HACP will not process, more than one (1) RTA per family at a time.

When the family submits the RTA the HACP 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 HACP will notify the family and the owner of the deficiencies.
- Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, by email or by fax. The HACP will not accept missing information over the phone.

When the family submits the RTA and proposed lease, the HACP 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 HACP 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, by email or by fax. The HACP will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the HACP will attempt to communicate with the owner and family by phone, fax, or email. The HACP will use mail when the parties cannot be reached by phone, fax, or email.

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9-I.C. OWNER PARTICIPATION

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. There are also criteria for which the PHA must disapprove an owner. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

9-I.D. ELIGIBLE UNITS

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the PHA's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]

The PHA 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 the PHA 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 the PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a PHA-owned unit without any pressure or steering by the PHA.

HACP Policy:

The HACP does have eligible HACP-owned units available for leasing under the voucher program. However, in the event such units become available, HACP will disclose unit information to assisted families in the same way as privately owned units is disclosed. In addition, HACP will contract with another Housing Authority or other third party approved by

Housing Authority of the City of Pittsburgh
HUD to perform **HQSNSPIRE** inspections or family re-certifications for families occupying HACP-owned units.

Special Housing Types [24 CFR 982 Subpart M]

HUD regulations permit, but do not generally require, the PHA 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 the PHA has chosen to allow.

The regulations do require the PHA 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

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- 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 ~~NSPIRE~~ Standards (HQS) [24 CFR 982.305 and 24 CFR 982.404][Notice PIH 2023-28]

In order to be eligible, the dwelling unit must be in ~~decent~~, safe and ~~sanitary~~habitable condition. This determination is made using HUD's ~~Housing Quality National~~ Standards (~~HQS~~for the Physical Inspection of Real Estate (NSPIRE)) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the ~~HQS~~NSPIRE 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~~people 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 ~~982.4025.703(d)(5)~~]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

Rent Burden [24 CFR 982.508]

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the family share cannot exceed 40 percent of the family's adjusted monthly income. The term "family share" refers to the amount the family pays toward rent and utilities. The gross rent for the unit minus the total housing assistance payment (HAP) for the unit equals the family share. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

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9-I.E. LEASE AND TENANCY ADDENDUM

The family and the owner must execute a written dwelling lease agreement for the assisted unit. This written lease is a contract between the tenant family and the owner; the PHA 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 for the assisted tenants is in such standard form.

All provisions in the HUD-required Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner. If there is a conflict between the owner's lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

HACP Policy:

The HACP does not provide a ~~model or~~ standard dwelling lease for owners to use in the HCV program.

Lease Information [24 CFR 982.308(d)]

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family.

Term of Assisted Tenancy

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the PHA to approve a shorter initial lease term if certain conditions are met.

HACP Policy:

Under current market conditions, the HACP may approve an initial lease term of less than one (1) year or more than one (1) year if it is the prevailing local market practice and agreed upon by the landlord and tenant. Due to the administrative burden, ***no month-to-month*** leases will be accepted as the initial term for the tenancy.

During the initial term of the lease, the owner may not raise the rent [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 stated in the dwelling lease if they exist.

The PHA 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 PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the PHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

HACP Policy:

The HACP will allow the owner to collect any security deposit amount the owner determines is appropriate and is in accord with local and state law.

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 as approved by the PHA minus the PHA'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)].

HACP Policy:

The HACP ***does not permit*** owners and families to execute separate,

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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.

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

The PHA will review the dwelling lease for compliance with all applicable requirements.

HACP Policy:

If the dwelling lease is incomplete or incorrect, the HACP 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, [email](#) or by fax. The HACP will not accept missing and corrected information over the phone.

Because the initial leasing process is time-sensitive, the HACP will attempt to communicate with the owner and family by phone, fax, or email. The HACP will use mail when the parties can't be reached by phone, fax, or email.

The PHA is permitted, but is not required, to review the lease to determine if the lease complies with state and local law and is permitted to decline to approve the tenancy if the PHA determines that the lease does not comply with state or local law [24 CFR 982.308(c)]

HACP Policy:

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The HACP **will not** review the owner's lease for compliance with state/local law. If HACP becomes aware that an owner's lease does not comply with state and local law, then HACP will require the owner to modify the lease in order to comply with state and local law. If the owner does not submit this within **5 business days**, then HACP will take any and all actions appropriate under its contract with the owner, including cancellation.

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9-I.F. TENANCY APPROVAL [24 CFR 982.305]

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the PHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the PHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the PHA and meets the ~~Housing Quality Standards (HQS); NSPIRE standards~~; the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the PHA, 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)].

HACP Policy:

The HACP will complete its determination within **10 business days** of receiving all required information.

If the terms of the RTA/proposed lease are changed for any reason, including but not limited to negotiation with the HACP, the HACP will obtain corrected copies of the RTA and proposed lease, signed by the family and the owner.

Corrections to the RTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The HACP will not accept corrections over the phone.

If the HACP determines that the tenancy cannot be approved for any

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reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The HACP will instruct the owner and family of the steps that are necessary to obtain approval of the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability or rent reasonableness, the HACP will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]

The HAP contract is a written agreement between the PHA and the owner of the dwelling unit. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of the family, and the owner agrees to comply with all program requirements as stated in the HAP contract.

The HAP contract form is prescribed by HUD.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA must execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The PHA 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 PHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The PHA 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, the PHA 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 the PHA may not pay any housing assistance payment to the owner.

HACP Policy:

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Owners who have not previously participated in the HCV program may be invited to attend a meeting with the HACP in which the terms of the Tenancy Addendum and the HAP contract will be explained. The HACP may waive this requirement on a case-by-case basis, if it determines that the owner is sufficiently familiar with the requirements and responsibilities under the HCV program.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the PHA. The HACP will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the HACP will execute the HAP contract. The HACP will not execute the HAP contract until the owner has submitted IRS form W-9. The HACP will ensure that the owner receives a copy of the executed HAP contract.

As required under VAWA-2013, once the HAP contract and lease have been executed and the family has been admitted to the program, the HACP will notify families of their rights under VAWA by providing all families with a copy of the domestic violence certification form (HUD-5382) as well as the VAWA notice of occupancy rights (form HUD-5380).

See Chapter 13 for a discussion of the HAP contract and contract provisions.

9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA 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, the execution of a new lease and HAP contract are required. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances.
- Changes in lease provisions governing the term of the lease.
- The family moves to a new unit, even if the unit is in the same building or complex.

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) along with a new dwelling lease containing the proposed changes. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of the rent, the owner must notify the PHA at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The PHA 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 terminate the tenancy 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)]. The rent to owner for a unit must not be increased at the annual anniversary date unless:

- (1) The owner requests the adjustment by giving notice to PHA; and
- (2) During the year before the annual anniversary date, the owner has complied with all requirements of the HAP contract, including compliance with the HQNSPIRE standards.

HACP Policy:

Where the owner is requesting a rent increase, the HACP will determine whether the requested increase is reasonable within 30 days of prior to the effective date. The owner will be notified of the determination in writing.

Rent increases will go into effect on the first of the month following the 60 Day period after the owner notifies the HACP of the rent change or on the date specified by the owner, whichever is later.

If the request is incomplete or incorrect the owner will be notified within 15 calendar days and given an opportunity to resubmit the request. The effective date will be the first of the month following a) 60 calendar days after the postmark date or fax time-date confirmation of the owners corrected request, or b) the date the unit passed its latest annual inspection, or c) on the date specified by the owner, whichever is later.

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Chapter 10

MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

INTRODUCTION

Freedom of housing choice is a hallmark of the housing choice voucher (HCV) program. In general, 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 the PHA'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 the PHA's HCV program, whether the family moves to another unit within the PHA's jurisdiction or to a unit outside the PHA'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 the PHA's jurisdiction. This part also covers the special responsibilities that the PHA has under portability regulations and procedures.

PART I: MOVING WITH CONTINUED ASSISTANCE

10-I.A. ALLOWABLE MOVES

HUD lists six regulatory 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 982.354(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice at the same time [24 CFR 982.354(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.354(b)(1)(ii)].

HACP Policy:

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give the HACP a copy of the termination agreement. HACP's Mutual Agreement to Terminate the Lease form must be submitted to HACP staff before the move can be approved.

- If 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

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process allowing the owner to evict the family [24 CFR 982.354(b)(2)]. The family must give the HACP a copy of any owner eviction notice [24 CFR 982.551(g)].

- The family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking, and the move is needed to protect the health or safety of the family or family member [see 24 CFR 982.354(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to the PHA, if the family or family member who is the victim reasonably believed that he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(b)(4), 24 CFR 982.353(b)]. The HACP must adopt an emergency transfer plan as required by regulations at 24 CFR 5.2007(e).

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HACP Policy:

If a family requests permission to move with continued assistance or for an external transfer to another covered housing program operated by the HACP based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking the HACP will request that the resident request the emergency transfer using form HUD-5383, and the HACP will request documentation in accordance with section 16-IX.D of this plan.

The HACP reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the HACP will document the waiver in the family's file.

The HACP may choose to provide a voucher to facilitate an emergency transfer of the victim without first terminating the assistance of the perpetrator.

Before granting an emergency transfer, the HACP will ensure the victim is eligible to receive continued assistance based on the citizenship or immigration status of the victim.

The HACP has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan and discusses external transfers to other covered housing programs.

- The HACP has terminated the HAP contract for the family's unit for the owner's breach [24 CFR 982.354(b)(1)(i)].
- The HACP 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

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composition. In such cases, the HACP must issue the family a new voucher, and the family and HACP must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the HACP must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the HACP gives notice to the owner. [24 CFR 982.403(a) and (c)]

10-I.B. RESTRICTIONS ON MOVES

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which 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 the PHA to deny a family permission to move under the following conditions:

Insufficient Funding

The PHA may deny a family permission to move either within or outside the PHA's jurisdiction if the PHA does not have sufficient funding for continued assistance [24 CFR 982.354(e)(1)]. However, Notice PIH 2016-09 significantly restricts the ability of PHAs to deny permission to move due to insufficient funding and places further requirements on PHAs regarding moves denied due to lack of funding. The requirements found in this notice are mandatory.

HACP Policy:

The HACP will deny a family permission to move on grounds that the HACP does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the PHA; (b) the HACP can demonstrate that the move will, in fact, result in higher subsidy costs (c) the HACP can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs; and (d) for portability moves, the receiving HACP is not absorbing the voucher.

If the HACP does not have sufficient funding for continued assistance, but the family must move from their unit (e.g., the unit failed **HQs inspection**), the family may move to a higher cost unit if the move is within the PHA's

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jurisdiction. The PHA, however, will not allow the family to move under portability in this situation if the family wishes to move to a higher cost area.

For both moves within the PHA's jurisdiction and outside under portability, the HACP will not deny a move due to insufficient funding if the HACP previously approved the move and subsequently experienced a funding shortfall if the family cannot remain in their current unit. The HACP will rescind the voucher in this situation if the family will be allowed to remain in their current unit.

The HACP will create a list of families whose moves have been denied due to insufficient funding. The HACP will keep the family's request open indefinitely, and when funds become available, the families on this list will take precedence over families on the waiting list. The HACP will use the same procedures for notifying families with open requests to move when funds become available as it uses for notifying families on the waiting list (see section 4-III.D).

The HACP will inform the family of its policy regarding moves denied due to insufficient funding in a letter to the family at the time the move is denied.

Pursuant to HUD revisions to the Portability guidance published in the Federal Register on August 20, 2015, HACP shall notify the local HUD office within 10 business days of a determination to deny a portability move based on insufficient funding.

Grounds for Denial or Termination of Assistance

The PHA may deny a family permission to move if it has grounds for denying or terminating the family's assistance [24 CFR 982.354(e)(2)].

HACP Policy:

If the HACP has grounds for denying or terminating a family's assistance, the HACP 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 982.354(c)]

HUD regulations permit the PHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the PHA to prohibit

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more than one elective move by a participant family during any 12-month period.

However, such prohibitions, if adopted, do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking and the move is needed to protect the health or safety of the family or family member. (For the policy on documentation of abuse, see section 10-I.A.) In addition, the PHA may not establish a policy permitting moves only at reexamination [Notice PIH 2016-09].

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HACP Policy:

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The HACP may deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the PHA's jurisdiction or outside it under portability.

The HACP may 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 PHA's jurisdiction.

The HACP will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency over which a family has no control.

In addition, the HACP will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

10-I.C. MOVING PROCESS

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Notification

If a family wishes to move to a new unit, the family must notify the PHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.354(d)(2)]. If the family wishes to move to a unit outside the PHA's jurisdiction under portability, the notice to the PHA must specify the area where the family wishes to move [24 CFR 982.354(d)(2)]. The notices must be in writing [24 CFR 982.5].

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Approval

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HACP Policy:

Upon receipt of a family's notification that it wishes to move, the HACP 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. The HACP will notify the family in writing of its determination within **10 business days** following receipt of the family's notification.

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Reexamination of Family Income and Composition

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HACP Policy:

For families approved to move to a new unit within the PHA's jurisdiction, the HACP will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the PHA's jurisdiction under portability, the HACP will follow the policies set forth in Part II of this chapter.

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Voucher Issuance and Briefing

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HACP Policy:

For families approved to move to a new unit within the PHA's jurisdiction, the HACP will issue a new voucher within **10 business days** of the PHA's written approval to move. No briefing is required for these families. The HACP 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 HACP approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the PHA's jurisdiction under portability, the HACP will follow the policies set forth in Part II of this chapter.

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Housing Assistance Payments [24 CFR 982.311(d)]

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When a family moves out of an assisted unit, the PHA 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.

The family must submit evidence that possession of the unit has been returned to the landlord. A Key Return Form must be signed by both the family and the landlord and returned to HACP within 5 days of the tenant vacating the unit AND returning the keys to the owner. If the tenant fails to return the keys to the prior landlord, transfer of unit possession will not have been documented and the new HAP contract shall be voided.

Under no circumstances will a HAP contract for a new unit be processed without the family submitting HACP's Key Return Form signed by the previous landlord.

10.I.D. ENHANCED VOUCHERS

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HUD provides tenant-based rental assistance in order to assist eligible residents that are affected by several different types of owner or HUD actions in HUD's Office of Multifamily Housing programs (collectively referred to as "Housing conversion actions").

Depending on the Housing conversion action and subject to the availability of appropriations, eligible families receive either regular voucher assistance or enhanced voucher assistance to mitigate the impact of the conversion action on the family's rent.

Enhanced vouchers are primarily provided in the case of preservation prepayments and Section 8 project-based contract opt-outs. Enhanced voucher assistance under Section 8(t) of the United States Housing Act of 1937 is calculated differently from regular housing choice voucher assistance if the family remains in the project. A higher "enhanced" payment standard is used to determine the amount of the monthly subsidy in cases where the gross rent of the unit exceeds the normally applicable PHA payment standard. In such instances, the gross rent for the unit is used in the monthly subsidy calculation instead of the normally applicable payment standard.

Voucher Issuance and PHA Determination of the Family's Over-housed Status.

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Under a Housing conversion action, PHA issues an eligible family an enhanced voucher based on PHA's subsidy standards (see 24 CFR §982.402), not the actual size of the unit the family is currently occupying. PHA must approve requests for a larger bedroom size to permit additional bedrooms if it may be necessary as a reasonable accommodation for a household with a family member with a disability, such as for example, to accommodate the need for a live-in aide or for medical equipment (see 24 CFR part 8).

If the bedroom size of the family's unit exceeds the number of bedrooms for which the family qualifies under PHA's subsidy standards, the family is an over-housed family unless the family qualifies for a reasonable accommodation because one or more family member(s) need an additional bedroom. If an over-housed family chooses to move from the project at any time, the normal tenant-based voucher program rules apply to the subsidy calculation for the new unit. In such a case, the payment standard is the lower of the payment standard for the family unit size under PHA's subsidy standards or the payment standard for the actual size of the unit rented by the family (see 24 CFR §982.402(c)).

Availability of Appropriate Size Units in the Project

If an over-housed family wishes to remain at the project, the regular voucher program requirements regarding the payment standard are not applicable and the provisions of PIH Notice 2016-02 apply.

The over-housed family must move to an appropriate size unit in the project if one is available in order to receive enhanced voucher assistance. The family and owner will enter into a lease and PHA will execute a voucher housing assistance payments (HAP) contract on behalf of the family for the appropriate size unit to which the family moves.

The enhanced voucher housing assistance payment calculation is based on the gross rent of the appropriate size unit. If an over-housed enhanced voucher family refuses to move to the appropriate size unit, and one exists and is available for occupancy, PHA will calculate the family's housing assistance payment for the over-sized unit based on the normally applicable voucher subsidy formula using the applicable payment standard established by PHA for its voucher program (see 24 CFR §982.402(c) and (d)). The family will be responsible for any amount of the gross rent not covered by the housing assistance payment.

Appropriate Size Unit does not Physically Exist in the Project.

If the family wishes to remain at the project with enhanced voucher assistance, and an appropriate size unit does not physically exist at the project, but a

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bedroom size unit is available that is smaller than the family's current unit but not smaller than the unit size for which the family qualifies under PHA's subsidy standards, the family must move to the smaller bedroom size unit within 30 calendar days unless there are mitigating circumstances that are beyond the family's control and approved by PHA.

The family and owner will enter into a new lease and PHA will execute a new voucher HAP contract with the owner for the smaller bedroom size unit. The enhanced voucher subsidy calculation is based on the gross rent for the smaller bedroom size unit. If an over-housed enhanced voucher family refuses to move to the smaller bedroom size unit, and one exists and is available for occupancy, PHA will calculate the family's housing assistance payment for the over-sized unit based on the normally applicable voucher subsidy formula using the applicable payment standard established by PHA for its voucher program (see 24 CFR §982.402(c) and (d)). The family will be responsible for any amount of the gross rent not covered by the housing assistance payment.

PHA and Family Actions when Appropriate Size Units Subsequently Become Available in the Project.

When PHA is informed that an appropriate size unit is available, PHA must immediately notify the over-housed family of the availability of the unit and the family must move to the appropriate size unit within 30 calendar days, unless there are mitigating circumstances that are beyond the family's control and approved by PHA, to continue to receive enhanced voucher assistance.

The family and owner will enter into a new lease and PHA will execute a new voucher HAP contract with the owner for the appropriate size unit. The enhanced voucher subsidy calculation is based on the gross rent for the appropriate size unit.

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PART II: PORTABILITY

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10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The PHA that issues the voucher is called the **initial PHA**. The PHA that has jurisdiction in the area to which the family wants to move

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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 provides all housing services for the family and 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 with its own program funds, and the initial PHA has no further relationship with the family. The initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the initial PHA's voucher. Based on the receiving PHA's response, the initial PHA must determine whether they will approve or deny the portability request [Notice PIH 2016-09].

PHAs commonly act as both the initial and receiving PHA because families may move into or out of their jurisdiction under portability. Each role involves different responsibilities. The PHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

In administering portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required forms [24 CFR 982.355(e)(5)].

PHAs must also comply with billing and payment deadlines. HUD may reduce an administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements [24 CFR 982.355(e)(7)].

10-II.B. INITIAL PHA ROLE

Allowable Moves under Portability

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA provides the family with the contact information for the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which PHA it has selected. If the family prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family [24 CFR 982.255(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the PHA's jurisdiction under portability. HUD regulations and HACP of the City of Pittsburgh Policy determine whether a family qualifies.

Applicant Families

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Under HUD regulations, most applicant families qualify to lease a unit outside the PHA's jurisdiction under portability. However, HUD gives the PHA 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. If a PHA intends to deny a family permission to move under portability due to insufficient funding, the PHA must notify HUD within 10 business days of the determination to deny the move [24 CFR 982.355(e)].

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HACP Policy:

In determining whether or not to deny an applicant family permission to move under portability because the HACP lacks sufficient funding or has grounds for denying assistance to the family, the initial HACP will follow the policies established in section 10-I.B of this chapter. If the HACP does deny the move due to insufficient funding, the HACP will notify HUD in writing within **10 business days** of the PHA's determination to deny the move.

In addition, the PHA 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)].

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HACP Policy:

If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in the PHA's jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within the initial PHA's jurisdiction for at least 12 months before requesting portability.

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The HACP will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking.

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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 982.353(b)]. The Violence against Women Act ~~of 2013~~ (VAWA) creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of a family member who is or has

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been a victim of domestic violence, dating violence, sexual assault, ~~or stalking~~, ~~or~~ ~~human trafficking~~ and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [see 24 CFR 982.353(b)].

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HACP Policy:

The HACP will determine whether a participant family may move out of the PHA'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 HACP will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

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Determining Income Eligibility

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Applicant Families

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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)(1)]. The family must specify the area to which the family wishes to move [24 CFR 982.355(c)(1)].

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 982.353(d)(1), 24 CFR 982.355(9)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2016-09].

Participant Families

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The income eligibility of a participant family is not redetermined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2)].

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Reexamination of Family Income and Composition

No new reexamination of family income and composition is required for an applicant family.

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HACP Policy:

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For a participant family approved to move out of its jurisdiction under portability, the HACP generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-

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52665, Family Portability Information.

The HACP 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 the PHA to provide information on portability to all applicant families that qualify to lease a unit outside the PHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

HACP Policy

No formal briefing will be required for a participant family wishing to move outside the PHA's jurisdiction under portability. However, the HACP 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 HACP will provide the name, address, and phone of the contact for the PHAs in the jurisdiction to which they wish to move. If there is more than one PHA with jurisdiction over the area to which the family wishes to move, the PHA will advise the family that the family selects the receiving PHA and notify the initial PHA of which receiving PHA was selected. The HACP will provide the family with contact information for all of the receiving PHAs that serve the area. The HACP will not provide any additional information about receiving PHAs in the area. The HACP will further inform the family that if the family prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family. In this case, the HACP will not provide the family with information for all receiving PHAs in the area.

The HACP will advise the family that they will be under the RHA's policies and procedures, including screening, subsidy standards, voucher extension policies, and payment standards.

Voucher Issuance and Term

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the PHA will follow the regulations and procedures set forth in Chapter 5.

HACP Policy:

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For participating families approved to move under portability, the HACP will issue a new voucher within **10 business days** of the PHA's written approval to move.

The initial term of the voucher will be **12090 days**.

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Voucher Extensions and Expiration

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HACP Policy:

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The HACP will approve **no** extensions to a voucher issued to an applicant or participant family porting out of the PHA's jurisdiction except under the following circumstances:

- (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA,
- (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or
- (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E.iii of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

~~To receive or continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 90 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)~~

Preapproval Contact with the Receiving PHA

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Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA via e-mail or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether it will approve or deny the move [24 CFR 982.355(c)(3)].

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HACP Policy:

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The HACP will use e-mail, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

Initial Notification to the Receiving PHA

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA via email or other confirmed delivery method to expect the family [24 CFR 982.355(c)(3); 24 CFR 982.355(c)(7)]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(6)].

HACP Policy:

Because the portability process is time-sensitive, the HACP will notify the receiving PHA by phone, fax, or e-mail to expect the family. The initial PHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, e-mail address, and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The HACP will pass this information along to the family. The HACP will also ask for the name, address, telephone number, fax and e-mail 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 2016-09]
- A copy of the family's voucher [Notice PIH 2016-09]
- 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)(7), Notice PIH 2016-09]
- Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 CFR 982.355(c)(7), Notice PIH 2016-09]

HACP Policy:

In addition to these documents, the HACP will provide the following information, **if available**, to the receiving PHA:

Social security numbers (SSNs)

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Documentation of SSNs for all nonexempt household members whose SSNs have not been verified through the EIV system.

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

If applicable, information related to the family's health and medical care and disability assistance expense phased-in hardship exemption, including what stage the family is in and how many months remain in that phase-in stage

The HACP will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

Initial Billing Deadline [Notice PIH 2016-09]

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The deadline for submission of initial billing is 90 days following the expiration date of the voucher issued to the family by the initial PHA. In cases where suspension of the voucher delays the initial billing submission, the receiving PHA must notify the initial PHA of delayed billing before the billing deadline and document the delay is due to the suspension. In this case, the initial PHA must extend the billing deadline by 30 days.

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 notify the initial PHA in writing. The initial PHA may report to HUD the receiving PHA's failure to comply with the deadline.

If the initial PHA will honor the late billing, no action is required.

HACP Policy:

If the HACP has not received an initial billing notice from the receiving PHA within the billing deadline, it will contact the receiving PHA to inform them that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. The HACP will send the receiving PHA a written confirmation of its decision by mail.

The HACP 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 2016-09]

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If the receiving PHA is administering the family's voucher, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. When reimbursing for administrative fees, the initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill [24 CFR 982.355(e)(2)].

The initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of over leasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

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HACP Policy:

The initial PHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the initial PHA that direct deposit is not acceptable to them. If the initial PHA extends the term of the voucher, the receiving PHA's voucher will expire 30 calendar days from the new expiration date of the initial PHA's voucher.

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Annual Updates of Form HUD-50058

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If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the 10-17

initial PHA should contact the receiving PHA to verify the status of the family. The initial PHA must continue paying the receiving PHA based on the last form HUD-50058 received, unless instructed otherwise by HUD. The initial PHA may seek absorption of the vouchers by following steps outlined in Notice PIH 2016-09.

Denial or Termination of Assistance [24 CFR 982.355(c)(17)]

At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance with the family in accordance with 24 CFR 982.552 and 24 CFR 982.553. (For PHA policies on denial and termination, see Chapters 3 and 12, respectively.)

10-II.C. RECEIVING PHA ROLE

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)]. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families [24 CFR 982.355(b)].

Administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to the policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the family, and the receiving PHA waiting list is not used [24 CFR 982.355(c)(10)]. The family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(c)(12)], and the receiving PHA's policies on extensions of the voucher term apply [24 CFR 982.355(c)(14)].

Responding ~~to~~ Initial PHA's Request [24 CFR 982.355(c)]

The receiving PHA must respond via e-mail or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed [24 CFR 982.355(c)(3)]. If the receiving PHA informs the initial PHA that it will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA (24 CFR 982.355(c)(4)).

HACP Policy:

The HACP will use e-mail, when possible, to notify the initial PHA whether it will administer or absorb the family's voucher.

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Initial Contact with Family

When a family moves into the HACP's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families. The family's failure to comply may result in denial or termination of the receiving PHA's voucher [24 CFR 982.355(c)(8)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA must contact the initial PHA to determine if it will extend the voucher [24 CFR 982.355(c)(13)]. An informal hearing is not required when a voucher has expired without the family leasing a unit.

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 2016-09]. (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 2016-09].

HACP Policy:

HACP will require the family to participate in a briefing only in the event the family is a first-time participant to the HCV Program. For port-in program participants, the HACP may not require the family to attend a briefing. The HACP 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 PHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process. The HACP may suggest that the family attend a full briefing at a later date. The tenant file will be documented with the date and time of the remote briefing and how the briefing packet was provided to them.

Income Eligibility and Reexamination

The receiving PHA does not redetermine eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(9)]. If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit [24 CFR 982.355(c)(11)].

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HACP Policy:

For any family moving into its jurisdiction under portability, the HACP may conduct a new reexamination of family income and composition. HACP **will not** conduct a reexamination except in the following instances:

- The reexamination anniversary is within the next 120 days or
- A reexamination has not been completed in the last 12 months
- New income information has been submitted
- If the information provided is incomplete.

However, the HACP will not delay issuing the family a voucher for this reason. Nor will the HACP delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the HACP cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

The HACP will rely upon any verifications 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(c)(13)]. 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)(15)].

Timing of Voucher Issuance

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2016-09].

HACP Policy:

When a family ports into its jurisdiction, the HACP will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher

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from the initial PHA has expired or the family does not comply with the PHA's procedures. The HACP 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 30 calendar days from the expiration of the initial PHA's voucher [24 CFR 982.355(c)(13)]. If the initial PHA extends the term of the voucher, the receiving PHA's voucher may not expire before 30 days from the new expiration date of the initial PHA's voucher [Notice PIH 2016-09].

HACP Policy:

The receiving PHA's voucher will expire 30 calendars days from the expiration date of the initial PHA's voucher. If the initial PHA extends the term of the voucher, the receiving PHA's voucher will expire 30 calendar days from the new expiration date of the initial PHA's voucher.

Voucher Extensions [24 CFR 982.355(c)(14), Notice 2016-09]

Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must inform the initial PHA of any extension granted to the term of the voucher. 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.

HACP Policy:

The HACP generally will not extend the term of the voucher that it issues to an incoming portable family unless the HACP 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 HACP will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Voucher Suspensions [24 CFR 982.303, 24 CFR 982.355(c)(15)]

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If the family submits a request for tenancy approval during the term of the receiving PHA's voucher, the PHA must suspend the term of that voucher. The term of the voucher stops from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied [24 CFR 982.4(b)] (see Section 5-II. E).

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)(16)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [Notice PIH 2016-09]. (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 2016-09].

Administering a Portable Family's Voucher

Portability Billing [24 CFR 982.355(e)]

To cover assistance for a portable family that was not absorbed, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. The amount of the housing assistance payment for a portable family in the receiving PHA's program is determined in the same manner as for other families in the receiving PHA's program.

The receiving PHA may bill the initial PHA for the lesser of 80 percent of the initial PHA's ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill (i.e., the receiving PHA may bill for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee).

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If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

HACP Policy:

Unless the HACP negotiates a different amount of reimbursement with the initial PHA, the HACP will bill the initial PHA the maximum amount of administrative fees allowed, ensuring any administrative fee proration has been properly applied.

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) 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 2016-09]. This deadline may be extended for 30 additional days if the delay is due to suspension of the voucher's term (see Initial Billing Section). 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.

HACP Policy:

The HACP 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 by the deadline, 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 2016-09].

Ongoing Notification Responsibilities [Notice PIH 2016-09, 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.

HACP Policy:

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The HACP will send a copy of the updated HUD-50058 by regular mail no later than **10 business days** after the effective date of the reexamination.

Change in Billing Amount. The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification. If the change resulted in a decrease in the monthly billing amount, the initial PHA will offset future monthly payments until the difference is reconciled.

Late Payments [Notice PIH 2016-09]

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 the PHAs 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.

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Overpayments [Notice PIH 2016-09]

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 2016-09.

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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)(17)].

In the case of a termination, the PHA 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 [HUD-52665; Notice PIH 2016-09].

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HACP Policy:

If the HACP elects to deny or terminate assistance for a portable family, the HACP will notify the initial PHA within **10 business days** after the informal review or hearing if the denial or termination is upheld. The HACP will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The receiving PHA will furnish the initial PHA with a copy of the review or hearing decision.

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Absorbing a Portable Family

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that the PHA has funding available under its annual contributions contract (ACC) [24 CFR 982.355(d)(1), Notice PIH 2016-09].

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, the receiving PHA must send an updated form HUD-52665 to the initial PHA no later than 10 business days following the effective date of the termination of the billing arrangement [Notice PIH 2016-09].

HACP Policy:

If the HACP decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the HACP 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 HACP decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice, but no later than **10 business days** following the effective date of the termination of the billing arrangement.

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 [24 CFR 982.355(e)(4)].

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Chapter 11

REEXAMINATIONS

INTRODUCTION

The PHA is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and PHA policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Part IV: Non-Interim Reexamination Transaction. This part describes transactions that do not entail changes to the family's adjusted income.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]

11-I.A. OVERVIEW

The PHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

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11-I.B STREAMLINED ANNUAL REEXAMINATIONS [24 CFR 982.516(b)]

Unlike when performing an interim reexamination or at intake, at annual reexamination, the PHA must determine the income of the family for the previous 12-month period, except where the PHA uses a streamlined income determination. Income from assets, however, is always anticipated, irrespective of the income examination type [Notice PIH 2023-27]. PHAs also have the option of using a “safe harbor” income verification from another federal means-tested program to verify gross annual income. Chapter 7 contains the PHA’s policies related to streamlined income determinations and the use of safe harbor income verifications.

11-I.B. HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

HACP Policy:

The *HACP* will streamline the annual reexamination process by applying the verified COLA or interest rate to fixed-income sources. Fixed income sources are incomes with at least 90 % of the income coming from the fixed income source. The *HACP* will document in the file how the determination that a source of income was fixed was made.

If a family member with a fixed source of income is added, the *HACP* will use third-party verification of all income amounts for that family member.

If verification of the COLA or rate of interest is not available, the *HACP* will obtain third-party verification of income amounts.

Third-party verification of fixed sources of income will be obtained during the intake process and at least once every three years thereafter.

Third-party verification of non-fixed income will be obtained annually when the percentage of family income received from fixed sources is less than 90%.

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11-I.C. SCHEDULING ANNUAL REEXAMINATIONS

The PHA must establish a policy to ensure that the annual reexamination for each family is completed *within* a 12-month period and may require reexaminations more frequently [HCV GB p. 12-1].

HACP Policy

The *HACP* will begin the annual reexamination process **120 days** in advance of its scheduled effective date. Generally, the *HACP* will schedule annual reexamination effective dates to coincide with the family's anniversary date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family moves to a new unit, the *HACP* may perform a new annual reexamination.

The *HACP* also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

Notification of and Participation in the Annual Reexamination Process

The PHA is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the PHA. However, PHAs should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

HACP Policy

Families generally are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or cohead. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the *HACP* to request a reasonable accommodation (see Chapter 2).

Notification of annual reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

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Housing Authority of the City of Pittsburgh

If the family is unable to attend a scheduled interview, the family should contact the *HACP* in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, the *HACP* will send a second notification with a new interview date and appointment time.

If a family fails to attend two scheduled interviews without *HACP* approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and the *HACP* must execute a certification attesting to the role and the assistance provided by any such third party.

11-I.D. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the PHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)]

HACP Policy:

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a *HACP*- designated reexamination form, ~~an~~ **Authorization for the Release of Information/Privacy Act Notice**, as well as supporting documents or forms related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within **10 business days** of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time period (plus any extensions), the family will be sent a notice of termination (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].

HACP Policy:

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Housing Authority of the City of Pittsburgh

At the annual reexamination, the *HACP* 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. The *HACP* may use the Dru Sjodin National Sex Offender database to verify the information provided by the tenant or an alternative vendor (*Tenant Reports*) that provides this information.

If the PHA proposes to terminate assistance based on lifetime sex offender registration information, the PHA must 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. [24 CFR 5.903(f) and 5.905(d)]. (See Chapter 12.)

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the PHA has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the ~~housing-quality~~^{space} standards (~~HQS~~) (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

11-I. ~~ED~~. 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.

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If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from his or her parents or is considered a *vulnerable youth* in accordance with HACP Policy 11-1, 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.

HACP Policy:

During the annual reexamination process, the *HACP* 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 or is considered a *vulnerable youth* based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), the *HACP* will process a reexamination in accordance with the policies in this chapter.

11-I.E. CALCULATING ANNUAL INCOME AT ANNUAL REEXAMINATION [24

CFR 5.609(c)(2) and Notice PIH 2023-27]

The PHA must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where the PHA uses a streamlined income determination as indicated in Chapter 7 of this policy. The PHA may also use Safe Harbor income determinations dated within the last 12 months from a means-tested federal public assistance program at annual reexamination as outlined in Chapter 7 of this policy.

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Except when using streamlined or Safe Harbor income determinations, in determining the income of the family for the previous 12-month period, any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination in accordance with PHA policies and 24 CFR 5.657(c) or 960.257(b) must be considered.

Income from assets is always anticipated, irrespective of the income examination type.

A change in income may be a loss of income or the addition of a new source of income. Changing to a different employer in the prior year does not necessarily constitute a change if the income earned from either employer is substantially the same. The PHA should look at the entirety of the family's unearned income and earned income from the prior year in which earned income may have been one constant job or many different jobs that start and stop.

Cost of Living Adjustments (COLA) to Social Security income and Social Security disability income are always considered changes to income because the COLA is an adjustment that automatically occurs annually by law. See Chapter 6 for PHA policies on when the COLA is applied and Chapter 7 on streamlined determination of income for inflationary adjustments.

Notice PIH 2023-27 lists the following steps to calculate both earned and unearned income at annual reexamination.

Step 1: The PHA determines annual income for the previous 12-month period by reviewing the following information:

- The EIV Income Report pulled within 120 days of the effective date of the annual reexamination;
- The income reported on the most recent HUD-50058; and
- The amount of prior-year income reported by the family on the PHA's annual reexamination paperwork.

Step 2: The PHA takes into consideration any interim reexamination of family income completed since the last annual reexamination.

- If there was an interim reexamination performed, the PHA must use the annual income from the interim to determine the family's total annual income, provided there are no additional changes.

- If the PHA did not perform an interim or there have been changes since the last reexamination, the PHA moves to Step 3.

Step 3: If there were changes in annual income not processed by the PHA since the last reexamination, the PHA must use current income. The family will be required to report their income for the prior year and whether there have been permanent changes.

- If there are no reported changes to an income source, the PHA may use documentation of prior-year income to calculate the annual income. For example, the PHA may use the following documentation:
- EIV + self-certification (wages, Supplemental Security Income (SSI), Social Security, and unemployment)
- Current written third-party verification from the source verifying prior-year income that is dated within 120 days of receipt by the PHA, for example:
 - Year-end statements
 - Paycheck with year-to-date amounts
 - Tax forms (Form 1040, W2, 1099, etc.)

If there are reported changes by the family or the PHA notes discrepancies between EIV and what the family reports, the PHA must follow the verification hierarchy (described in Chapter 7) to document and verify income. Exhibit 11-1 provides detailed examples of how the PHA calculates income from different sources at annual reexamination using the above method.

HACP Policy:

When income is calculated using a streamlined income determination or Safe Harbor determination from a means-tested federal public assistance program in accordance with PHA policies in Chapter 7, the above is not applicable. However, where the family disagrees with the PHA or other agency's determination of income or the PHA has other reason to use third-party verification in these circumstances, then the above will apply.

11-I.F. EFFECTIVE DATES

The PHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

HACP Policy:

In general, an **increase** in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If the *HACP* chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the *HACP* but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, **increases** will be applied retroactively in the family share of the rent, to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a **decrease** in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the **decrease** will take effect on the effective date of the new lease and HAP contract.

If the *HACP* chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the *HACP*.

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.

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Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the *HACP* by the date specified, and this delay prevents the *HACP* from completing the reexamination as scheduled.

PART II: INTERIM REEXAMINATIONS [24 CFR 982.516] Notice PIH 2023-27

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11-II.A. OVERVIEW

Family circumstances may change between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. ~~HUD regulations also permit the PHA 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 A family must report, HUD regulations permit the family to may request an interim determination if other aspects of the family's family income or composition because of any changes since the last determination. The PHA must ~~complete the~~conduct any interim reexamination within a reasonable period of time after the ~~family's~~family request.~~

~~This part includes HUD and or when the PHA policies describing what changes families are required to report, what changes families may choose to report, and how becomes aware of a change in the family's adjusted income that must be processed in accordance with HUD regulations. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but the PHA will process both generally should conduct the interim reexamination not longer than 30 days after the PHA and family-initiated interim reexaminations becomes aware of changes in income.~~

Notice PIH 2023-27 changes the conditions under which interim reexaminations must be conducted, codifies when interim reexaminations should be processed and made effective, and requires related changes for annual reexaminations and streamlined income determinations. When the PHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income.

11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

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PHAs must require families to report all changes in family household composition: changes; however, PHAs determine the timeframe in which reporting happens [Notice PIH 2023-27]. The PHA must adopt policies prescribing when and under what conditions the family must report changes in income and family composition. However, due to family obligations under the program, the PHA has limited discretion in this area.

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HACP Policy:

The HACP will conduct interim reexaminations to account for any All families must report all changes in family and household composition that occur between annual reexaminations- within 10 business days of the change.

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New Family Members Not Requiring PHA Approval

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 the PHA of the addition [24 CFR 982.551(h)(2)].

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HACP Policy:

The family must inform the HACP of the birth, adoption, or court-awarded custody of a child within 10 business days.

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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)].

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Although the PHA must verify aspects of program eligibility when any new family member is added, the Streamlining Final Rule removed the requirement that PHAs conduct a reexamination of income whenever a new family member is added. The PHA may state in policy that an income reexamination will be conducted.

When any new family member is added, the PHA must make appropriate adjustments in the family share of the rent and the HAP payment at the effective date of either the annual or interim reexamination [24 CFR 982.516(e)(2)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the PHA must issue the family a new voucher,

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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, the PHA must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

HACP Policy:

Families must request *HACP* approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 15 consecutive days or 45 cumulative days within a 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the *HACP* prior to the individual moving into the unit.

HACP **will not** increase the subsidy size (number of bedrooms) when adding additional family member(s) to an existing tenancy. This does not include adults by marriage, children by birth, adoption or legal guardianship. The family is required to sign a *Waiver of Voucher Size Standards* declaring that they understand that if they move from the assisted unit, the voucher size will remain the same size as it was prior to the addition of the new family member(s).

The *HACP* will not approve the addition of a new family or household member unless the individual meets the PHA's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

In circumstances of ***adding previous household members***, the family **will not** be permitted to add additional family units to the voucher unless the adult member had been ***previously listed on the HUD 50058 in the last three years*** or is the spouse or co- head of the head of household and is eligible.

The *HACP* will not approve the addition of a foster child or foster adult if it will cause a violation of **HQS**-space standards. If the *HACP* determines an individual meets the PHA's eligibility criteria and documentation requirements, the *HACP* 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**space standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If the *HACP* determines that an individual does not meet the PHA's eligibility criteria or documentation requirements, the *HACP* will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

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The *HACP* 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 the PHA if any ~~family~~household 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], the PHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit. The PHA must process an interim for all decreases in adjusted income when a family member permanently moves out of the unit.

HACP Policy:

If a household member ceases to reside in the unit, the family must inform the *HACP* 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 no longer resides in the unit, the family must inform the *HACP* within **10 business days**.

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11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

Overview

Interim reexaminations ~~can~~for changes in income or expenses may be scheduled either because the PHA 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, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.~~

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PHA-Initiated Interim Reexaminations

~~PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the PHA. They are not scheduled because of changes reported by the family.~~

The PHA must estimate the income of the family for the upcoming 12-month period to determine family income for an interim reexamination [24 CFR 5.609(c)(1)]. Policies for projecting income are found in Chapter 6.

Interim Decreases [24 CFR 982.516(c)(2) and Notice PIH 2023-27]

A family may request an interim determination of family income for any change since the last determination. However, the PHA may decline to conduct an

interim reexamination if the PHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's adjusted income. The PHA may set a lower threshold in PHA policy such as performing an interim for any decreases in adjusted income, although HUD prohibits the PHA from setting a dollar-figure threshold.

However, while the PHA has some discretion, HUD requires that the PHA perform an interim reexamination for a decrease in adjusted income of any amount in two circumstances:

- When there is a decrease in family size attributed to the death of a family member; or
- When a family member permanently moves out of the assisted unit during the period since the family's last reexamination.

In the above circumstances, the PHA must perform an interim reexamination for any decrease in adjusted income.

If the net effect of the changes in adjusted income due to a decrease in family size results in no change or an increase in annual adjusted income, then PHA must process the removal of the household member(s) as a non-interim reexamination transaction without making changes to the family's annual adjusted income.

HACP Policy:

The HACP will conduct interim reexaminations in each of the following instances:

- EID: For families receiving the Earned Income Disallowance (EID), the HACP will conduct an interim reexamination at the start and conclusion of the 24-month eligibility period any time the family's adjusted income has decreased by any amount.

Zero-Income Families: If the family has reported zero income, the HACP will

Interim Increases [24 CFR 982.516(c)(3) and Notice PIH 2023-27]

Increases Less than 10 Percent

PHAs must not process interim reexaminations for income increases that result in less than a 10 percent increase in annual adjusted income.

Increases 10 Percent or Greater

- PHAs must conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.
- If a family member reports a zero of family income, while other family members continue to receive income, HACP will conduct an Interim reexamination to reduce the family's rent portion for the first of the month following the reported reduction in income. Once that family member begins to receive income, they must report it within 14 days and HACP will conduct a

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follow-up Interim reexamination to adjust the tenant rent portion to begin at least 30 days from the reported increase in income. This is to be distinguished from a reduction in income for a family member or household whereby HACP will adjust the household's rent portion for the first of the following month but will not re-adjust the rent portion when the household's income increases again until the family's Annual reexamination. The family is still required to report the increase in income as indicated in this chapter. PHA becomes aware that the family's adjusted income has changed by an amount that the PHA estimates will result in an increase of 10 percent or more in adjusted income, with the following exceptions:

- If PHAs may not consider any increases in earned income when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction during the same reexamination cycle; and
- PHAs may choose not to conduct an interim reexamination during the last three months of a certification period if a family reports an increase in income within three months of the next annual reexamination effective date.

When the family previously received an interim reexamination for a decrease to adjusted income during the same annual reexamination cycle, a PHA has the discretion whether to consider a subsequent increase in earned income.

HACP Policy:

When a family reports an increase in their earned income between annual reexaminations, the PHA will not conduct an interim reexamination, regardless of the amount of the increase, and regardless of whether there was a previous decrease since the family's last annual reexamination. The PHA will process an interim reexamination for any increases in unearned income of 10 percent or more in adjusted income.

The PHA will not perform an interim reexamination when a family reports an increase in income (whether earned or unearned income) within three months of their annual reexamination effective date. However, families who delay reporting income increases until the last three months of their certification period may be subject to retroactive rent increases in accordance with the PHA policies in Chapter 14.

Concurrent Increases in Earned and Unearned Income [Notice PIH 2023-27]

When the family reports an increase in both earned and unearned income at the same time, the PHA must look at the earned and unearned income changes independently of each other to determine if an interim reexamination is performed. The PHA will only conduct an interim reexamination when the increase independently meets the 10 percent threshold and all other requirements for performing interim reexaminations. For example, if a family reported increases in both earned and unearned income that overall resulted in a

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12 percent increase in their adjusted income, but the change in earned income represented a 7 percent increase and the change in unearned income represented a 5 percent increase, the PHA may not perform an interim for either change since neither change meets the 10 percent threshold amount independently. If the change in unearned income met the 10 percent threshold in this case, the PHA would be required to perform an interim. If the change in earned income met the 10 percent threshold in this case, the PHA would refer to PHA policy to determine whether an interim was required.

Cumulative Increases [Notice PIH 2023-27]

- A series of smaller reported increases in adjusted income may cumulatively meet or exceed the 10-percent increase threshold, at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g., seasonal or cyclic income), the HACP will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.
- If at the time of the annual reexamination, tenant declarations were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the HACP will conduct an interim reexamination.

The HACP may point the PHA must conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint in accordance with PHA policy.

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Family-Initiated Interim Reexaminations Reporting

The PHA must adopt policies consistent with HUD regulations prescribing when and under what conditions the family must report a change in family income or composition [24 CFR 982.516(d)].

PHA policy may require families to report only changes that the family estimates meet the threshold for an interim reexamination or the PHA may establish policies requiring that families report all changes in income and household composition, and the PHA will subsequently determine if the change requires an interim reexamination [Notice PIH 2023-27].

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When the PHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in family all aspects of adjusted income or expenses [24 CFR 982.516(e)]. In addition, HUD regulations require that . For example, if the family be permitted to obtain an interim reexamination any time is reporting a decrease in adjusted income that is more than 10 percent, but the family has experienced also had a change in circumstances since assets

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that would result in a change in income, the last determination [24 CFR 982.516(b)(2)]. change in assets must also be reviewed [Notice PIH 2023-27].

Required HACP Policy:

The family Reporting

HUD regulations give the PHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

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all changes in income regardless of the amount of the change, whether the change is to earned or unearned income, or if the change occurred during the last three months of the certification period. Families must

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HACP Policy:

Families are required to report all increases changes in earned income, including new employment, within 10 business days of the date the change takes effect. The family may notify the PHA of changes either orally or in writing. If the family provides oral notice, the PHA may also require the family to submit the changes in writing.

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The HACP will also conduct interim reexaminations for families that qualify for Within 10 business days of the earned income disallowance (EID), and only when family reporting the EID family's share of rent will change as a result of the increase.

In all other cases, PHA will determine whether the HACP change will **not** conduct require an interim reexamination.

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However, all Families are required to report any other changes if the change will not result in income or expenses.

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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)]. The PHA must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

PHA HACP Policy:

If a family reports a change that it was not required to report and

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~~that would result in an increase in the family share of the rent, HACP will note the information in the tenant software database file but will not conduct an interim reexamination. The PHA will send the family written notification within 10 business days of making this determination informing the family that the PHA will not conduct an interim reexamination.~~

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~~If a family reports a change that will last for at least 30 calendar days that it was not required to report and that would result in a decrease in the family share of rent, HACP will conduct an interim reexamination. See Section 11-II.D. for effective dates.~~

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~~Families may report changes in income or expenses at any time.~~

~~11-II.D. PROCESSING THE INTERIM REEXAMINATION~~

~~Method of Reporting~~

~~If the change will result in an interim reexamination, the PHA will determine the documentation the family will be required to submit based on the type of change reported and PHA policies in Chapter 7. The PHA will ask the family to report changes in all aspects of adjusted income at this time. The family must submit any required information or documents within 10 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, email, fax, or in person. The PHA will conduct the interim within a reasonable time period based on the amount of time it takes to verify the information.~~

~~HACP Policy:~~

~~The family must notify the HACP of changes in writing.~~

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Generally, the family will not be required to attend an interview for an interim reexamination. However, if the ~~HACPPHA~~ determines that an interview is warranted, the family may be required to attend.

~~Based on the type of change reported, the HACP 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 HACP. This time frame may be extended for good cause with HACP approval. The HACP will accept required documentation by mail, by fax, or in person.~~

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~~Effective Dates~~

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~~The PHA must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].~~

11-II.D. EFFECTIVE DATES [24 CFR 982.516(e) and Notice 2023-27]

Changes Reported Timely [Notice PIH 2023-27]

If the family reports a change in family income or composition timely in accordance with PHA policies:

- For rent increases, the PHA must provide the family with 30 days advance written notice. The rent increase is effective the first of the month after the end of that 30-day notice period.
- Rent decreases are effective on the first of the month after the date of the actual change leading to the interim reexamination of family income. This means the decrease will be applied retroactively.

Changes Not Reported Timely [Notice PIH 2023-27]

If the family failed to report a change in family income or composition timely in accordance with PHA policies:

- For rent increases, the PHA must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income.
- For rent decreases, the PHA must implement the change no later than the first rent period following completion of the interim reexamination.

However, the PHA may choose to adopt a policy that would make the effective date of the rent decrease retroactive to the first of the month following completion of the reexamination. PHAs may choose to establish conditions or requirements for when such a retroactive application would apply. PHAs that choose to adopt such policies must ensure the earliest date that the retroactive decrease is applied is the later of:

- The first of the month following the date of the change that led to the interim reexamination; or
- The first of the month following the most recent previous income examination.

In applying a retroactive change in rent as the result of an interim reexamination, the PHA must clearly communicate the effect of the retroactive adjustment to the family so that there is no confusion over the amount of the rent that is the family's responsibility.

HACP Policy:

If in general, when 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 a rent decrease, the required time frames, the increase PHA will be applied apply the decrease the first of the month following completion of the interim reexamination.

However, the PHA will apply the results of the interim reexamination retroactively where a family's ability to the date it would report a change in income promptly may have been effective had the information been provided on a timely hampered due to extenuating circumstances such as a natural disaster or disruptions to PHA management operations. The PHA will decide to apply decreases retroactively on a case-by-case basis. The family will be responsible for any overpaid subsidy and may be offered

- When the PHA applies the results of interim decreases retroactively, the PHA will clearly communicate the effect of the retroactive adjustment to the family and may enter into a repayment agreement in accordance with the PHA policies in Chapter 16.

If the PHA will also clearly communicate the family share effect of the rent is retroactive adjustment to **decrease**:

The decrease will be effective on the first day of the month following the month in which the change was reported with all required documentation submitted. OWNER. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

11-III.A. OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, the PHA must recalculate the family share of the rent and the subsidy amount and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these

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calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the PHA'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 the PHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the PHA'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*, during the term of a HAP contract, the PHA is not required to reduce the payment standard as the HAP contract remains in effect. At the family's *second annual* reexamination, the PHA may, but is not required to, apply the decreased payment standard or may gradually implement the reduced payment standard (See Chapter 6 for the PHA's policy on decreases 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 the PHA's subsidy standards (see Chapter 5), the new family unit size must be

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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 the PHA'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, the PHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the PHA must use the PHA current utility allowance schedule [24 CFR 982.517(d)(2)].

HACP Policy:

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination after the allowance is adopted.

11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT

The PHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the PHA'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).

HACP Policy:

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

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11-III.D. DISCREPANCIES

During an annual or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of subsidy are ~~discover~~discovered, corrections will be made in accordance with the policies in Chapter 13.

PART IV: NON-INTERIM REEXAMINATION TRANSACTIONS [Notice PIH 2023-27]

Families may experience changes within the household that do not trigger an interim reexamination under PHA policy and HUD regulations but which HUD still requires the PHA to report to HUD via Form HUD-50058. These are known as non-interim reexamination transactions. In these cases, PHAs will submit a separate, new action code on Form HUD-50058. The following is a list of non-interim reexamination transactions:

- Adding or removing a hardship exemption for the childcare expense deduction;
- Updating or removing the phased-in hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction (families will begin receiving a 24-month phased-in relief at their next annual or interim reexamination, whichever occurs first)
- Adding or removing general hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction;
- Adding or removing a minimum rent hardship;
- Adding or removing a non-family member (i.e., live-in aide, foster child, foster adult);
- Ending a family's EID or excluding 50 percent (decreased from 100 percent) of a family member's increase in employment income at the start of the second 12- month EID period.
- Adding a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Removing a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Adding/updating a family or household member's Social Security number; and

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- Updating a family member's citizenship status from eligible to ineligible or vice versa, resulting in a change to the family's rent and/or utility reimbursement, if applicable (i.e., family begins receiving prorated assistance or previously prorated assistance becomes full assistance), or updating the prorated rent calculation due to the addition or removal of family members in household with an ineligible noncitizen(s).

PHAs must make all other changes to assets, income, and deductions at the next annual or interim reexamination of income, whichever is sooner.

EXHIBIT 11-1: CALCULATING Income AT ANNUAL REEXAMINATION

Example 1: Calculating Annual Income at Annual Reexamination Using EIV

Staff are processing the 3/1/2024 annual reexamination for Ruby Myers and her minor daughter, Georgia. No interim reexaminations have been processed, and Ruby has not

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reported any changes to annual income to the PHA since the 3/1/2023 annual reexamination. The SSA published 2024 COLA is 7 percent.

Last reexamination – 3/1/2023 Annual Reexamination

Ruby:

Wages: \$30,000

Georgia:

SSI: \$10,980 (\$915 monthly)s

The EIV report pulled on 12/15/2023

Ruby:

Wages Total: \$33,651

Quarter 3 of 2023: \$8,859 (City Public School)

Quarter 2 of 2023: \$8,616 (City Public School)

Quarter 1 of 2023: \$8,823 (City Public School)

Quarter 4 of 2022: \$7,353 (City Public School)

Georgia:

SSI Total: \$10,980

2023 benefit \$915 monthly

Income Reported on Reexamination Application

Ruby:

Wages at City Public School: \$32,000
(switched jobs but no permanent change
to amount)

Georgia:

SSI benefits: \$10,980 (no changes)

Calculating Ruby's wages:

Step 1: Determine prior annual income
from EIV (i.e., Q4 2022 through Q3 of
2023: \$33,651).

Step 2: Take into consideration any interim
reexamination of family income completed
since the last annual reexamination (in this
case, there have been no interim
reexaminations processed since the last
annual reexamination).

Step 3: Ruby certifies that the \$33,651 of
wages in EIV is accurate and reflects her
current annual income, so the PHA will
use \$33,651 for annual wages for the
3/1/2024 annual reexamination given there
have been no additional changes to
annual income.

Calculating Georgia's SSI benefit:

Step 1: Determine the prior annual income
from EIV (i.e., \$915 x 12 months:
\$10,980).

Step 2: Take into consideration any interim
reexamination of family income completed
since the last annual reexamination (in this
case, there have been no interim
reexaminations processed since the last
annual reexamination).

Step 3: Ruby certifies the SSI income in
EIV is accurate and reflects Georgia's
current annual income. The PHA must
adjust the prior-year income (2023 SSI
benefit) by the 7- percent COLA and will
use this amount to calculate annual SSI
income for the 3/1/2024 annual
reexamination:

COLA: \$64.05 (\$915 x 0.07)
New gross SSI benefit: \$11,748.60
(\$979.05 x 12 months)

If Ruby did not agree with the annual
wages reported in EIV, the PHA/MFH
Owner would be required to verify her
current income in accordance with HUD's
verification hierarchy.

Summary of Annual Income (as reported on the HUD-50058)

Ruby (Head of Household):

Other Wage: \$33,651

Myers Family Total Annual Income:
\$45,399

Georgia (Other Youth Under 18):

SSI: \$11,748

**Example 2: Calculating Annual Income at Annual Reexamination Using EIV:
Family Disagrees with EIV**

Staff are processing Paul Hewson's 5/1/2024 annual reexamination. Since the last annual reexamination, Paul reported a decrease in annual income that exceeded 10 percent. Last year, Paul reported a decrease in earned income because he transferred from a full-time job at Sasha's Sweets to a part-time job at Viking Bakery. Following HUD's EIV verification hierarchy, staff confirmed Paul was no longer employed at Sasha's Sweets and decreased his anticipated annual income from \$28,000 to \$7,500 resulting from his new part-time employment at Viking Bakery; an interim reexamination was processed effective 7/1/2023. After the 7/1/2023 interim, Paul worked briefly at two different jobs, but he says he is no longer working and is not planning to work.

5/1/2023 Annual Reexamination

Wages: \$28,000

The EIV report pulled on 1/15/2024

Wages Total: \$18,271

Quarter 3 of 2023: \$2,500 (Viking Bakery)

Quarter 3 of 2023: \$796 (Sweet Tooth Candy Bar)

Quarter 2 of 2023: \$1,300 (Sasha's Sweets)

Quarter 2 of 2023: \$584 (Larry's Concessions)

Quarter 2 of 2023: \$2,401 (Viking Bakery)

Quarter 1 of 2023: \$6,500 (Sasha's Sweets)

Quarter 4 of 2022: \$600 (Sasha's Sweets)

SS/SSI: No history of benefits

Income Reported on Reexamination Application

Wages: \$0 (permanent change; no longer receiving)

Social Security: \$14,400 (\$1,200 monthly)

Paul certified on the PHA's annual reexamination paperwork that he does not agree with the annual wages of \$18,271 reported in EIV and it is not reflective of his current anticipated annual income. He reported he is currently unemployed, and provided a copy of an award letter from the Social Security Administration to document that he will begin receiving a monthly disability benefit of \$1,200 effective 3/1/2024.

Calculating Wages and SS Benefit

Step 1: Determine prior annual income taking into consideration the 8/1/2023 interim reexamination (i.e., EIV wages reflected Q4 2022 through Q3 2023: \$18,271)

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there was a 7/1/2023 interim that reduced wages to \$7,500.

Step 3: Obtain documentation to verify current income and confirm Paul is no longer employed at Viking Bakery or The Sweet Tooth Candy Bar (the employers reported in the most recent quarter of EIV). This step is necessary, because Paul did not agree with the EIV income report or income reported on the last interim reexamination. Paul reported that he is no longer working at all.

Process the annual reexamination effective 5/1/2024 using annual SS income of \$14,400 and \$0 wages.

Summary of Annual Income (as reported on the HUD-50058)

Paul (Head of Household): \$14,400 (SS)

Hewson Family Total Annual Income: \$14,400

Example 3: Calculating Annual Income at Annual Reexamination

Staff are processing the 11/1/2024 annual reexamination for Samantha and Fergus Pool, head of household and spouse. On 2/14/2024 Samantha reported her monthly child support payment was reduced from \$200 to \$100 per month, but an interim reexamination was not processed because the reduction in child support income for Samantha's daughter, Hailey, did not result in a decrease of 10 percent or more in annual adjusted income, and the PHA did not establish a lower threshold. Samantha did not report any additional changes to the PHA.

Last reexamination – 11/1/2023 Annual Reexamination

<u>Samantha:</u>	<u>Fergus:</u>
<u>Business income: \$28,000</u>	<u>Wages: \$8,250</u>
<u>VA disability pension: \$12,000</u>	<u>Other non-wage income: \$3,000 (Go</u>
<u>Child support: \$2,400</u>	<u>Fund Me online fundraiser)</u>

The EIV report pulled on 9/16/2024

Samantha:

Wages Total: \$0 (no wage data reported since Q1 2023)

Fergus:

Wages Total: \$8,600
Quarter 1 of 2024: \$2,100 (Ian's Fish 'n' Chips)
Quarter 1 of 2024: \$500 (Claire's Healthcare Supplies)
Quarter 4 of 2023: \$1,000 (Claire's Healthcare Supplies)
Quarter 3 of 2023: \$1,800 (The Onion Garden Shop)
Quarter 2 of 2023: \$3,200 (Ivar's Fish Haus)

Current Family Circumstances: Income Reported on Reexamination

Application

Samantha and Fergus reported how much income was earned/received in the previous 12-month period and noted permanent changes, where applicable, for each source of their income on PHA's annual reexamination form. However, no information was reported by the family concerning other non-wage income. Fergus reported only wages and his current employment at Ian's Fish 'n' Chips for the annual reexamination. The family supplied the supporting documentation noted below to the PHA for the 11/1/2024 annual reexamination.

Samantha:

Fergus:

Business income: \$28,750 (last year); has decreased to \$18,000 (permanent change)

Wages: \$6,000

VA disability benefit: \$12,000 (last year); has increased to \$12,300 (permanent change)

Child support: \$2,400 (last year); has decreased to \$1,200 (permanent change)

Calculating Samantha's Net Business Income

Step 1: Determine prior annual net business income (i.e., \$28,000 on last HUD-50058.

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: Adjust to reflect current net business income. Samantha reported on the annual reexamination application that business income permanently decreased to \$18,000. The PHA must obtain supporting documentation from Samantha that demonstrates current net business income. Samantha provided documentation that supported the current annual net business income is \$18,000. Process the annual reexamination effective 11/1/2024 using annual net business income determined in Step 3.

Calculating Samantha's VA Pension Income

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Step 1: Determine prior annual VA pension income (i.e., \$12,000 supported by a VA award letter Samantha supplied that documents the prior year monthly VA pension was \$1,000).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: The PHA needs to adjust to reflect current VA pension income. Samantha supplies a VA award letter showing a monthly pension of \$1,025, or \$12,300 annually. Process the annual reexamination effective 11/1/2024 using annual VA pension income determined in Step 3 (\$12,300 in this example).

Calculating Samantha's Child Support Income

Step 1: Determine prior annual child support income (i.e., \$2,400 on the last HUD-50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination. The family reported a decrease from \$200 to \$100 monthly, but the change was not processed because it did not meet the threshold.

Step 3: The family reported changes, so the PHA must adjust to reflect current child support income. In this example, the family submitted a child support history report from the local child support office that documents regular \$100 monthly child supports payments beginning 3/1/2024 through the current month. Process the annual reexamination effective 11/1/2024 using current annual child support income determined in Step 3 (\$1,200 in this example).

Calculating Fergus' Wages

Step 1: Determine prior annual income from wages in EIV (i.e., Q2 2023 through Q1 of 2024: \$8,600).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: There is a discrepancy between what the family reported and EIV, so the PHA must verify and adjust to reflect current annual income from wages. Fergus reported \$6,000 in annual income from wages on the annual reexamination from

Housing Authority of the City of Pittsburgh

a single employer, Ian's Fish 'n' Chips. The PHA projected annual income of \$7,800 based on the two paystubs for this employer, and EIV shows \$8,600 earned in the most recent four quarters in EIV. To complete Step 3, the PHA must do the following:

- Resolve the discrepancy between EIV wages, the \$6,000 annual income Fergus reported, and the \$7,800 projected based on the paystubs he provided, and
- Verify he is no longer employed at Claire's Healthcare Supplies in accordance with HUD's verification hierarchy and local policies.

The PHA determined that Fergus reported his net vs. gross annual income from wages, which he corrected on the annual reexamination form to reflect his current gross annual income of \$9,000. The PHA verified Fergus was no longer employed at Claire's Healthcare Supplies and obtained two additional paystubs. Based on four current and consecutive paystubs, Fergus is now projected to earn \$9,360 annually. Process the annual reexamination effective 11/1/2024 using income from wages determined in Step 3 (\$9,360 in this example).

Calculating Fergus' Other Non-Wage Inc

Step 1: Determine prior annual income from other non-wage income (i.e., \$3,000 on the last HUD- 50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: The family did not report any non-wage income on the annual reexamination form, but it was included on the last HUD-50058. The PHA must verify and adjust to reflect current non-wage income. The PHA must verify no income was received through a "Go Fund Me" online fundraiser so that it may be excluded. Fergus provided a self-certification that he hasn't solicited funds online and doesn't plan to in the following year; he also provided records from the account that documented no fundraising activity in the prior 12-month period. Process the annual reexamination effective 11/1/2024 using annual non-wage income of \$0 determined in Step 3.

Summary of Annual Income (as reported on the HUD-50058)

Samantha (Head of Household):	Fergus (Co-head):
Own business: \$18,000	Wages: \$9,360
Pension: \$12,300	
Child support: \$1,200	
Poole Family Total Annual Income: \$40,860	

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Chapter 12

TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify mandatory and optional grounds for which a PHA can terminate a family's assistance. They also specify the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter describes the policies that govern mandatory and optional 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 describes the various circumstances under which assistance under the program can be terminated by the family or by the PHA.

Part II: Approach to Termination of Assistance. This part describes the policies and the process that the PHA will use in evaluating decisions on whether to terminate assistance due to actions or inactions of the family where termination is an option. It specifies the alternatives that the PHA may consider in lieu of termination, the criteria the PHA will use when deciding what action to take, and the steps the PHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part describes the HUD policies that govern the owner's right to terminate an assisted tenancy.

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PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

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12-I.A. OVERVIEW

HUD requires the PHA to terminate assistance for certain actions and inactions of the family and when the family no longer requires assistance due to increases in family income. HUD permits the PHA to terminate assistance for certain other actions or inactions of the family. In addition, a family may decide to withdraw from the program and terminate their HCV assistance at any time by notifying the PHA.

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

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As a family's income increases, the amount of the housing assistance payment decreases. If the amount of assistance provided by the PHA is reduced to zero, the family's assistance terminates automatically 180 days after the last HAP payment.

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HACP Policy:

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the *HACP* of the change and request an interim reexamination before the expiration of the **180-day** period.

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12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

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The family may request that the PHA terminate housing assistance payments on behalf of the family at any time.

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HACP Policy:

The request to terminate assistance should be made in writing and signed by the head of household, and spouse or cohead if applicable. Before terminating the family's assistance, the *HACP* will follow the notice requirements in Section 12-II.F.

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12-I.D. MANDATORY TERMINATION OF ASSISTANCE

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HUD requires the PHA to terminate assistance in the following circumstances.

Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]

The PHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. As discussed further in section 12-II.E., incidents of actual or threatened domestic violence, dating violence, sexual assault, ~~or stalking~~, ~~or human trafficking~~ may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

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HACP Policy:

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

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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. In such cases the *HACP* 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. In making its decision, the *HACP* will consider the factors described in sections 12-II.D and 12-II.E. Upon consideration of such factors, the *HACP* may, on a case-by-case basis, choose not to terminate assistance.

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

Failure to Provide Consent [24 CFR 982.552(b)(3)]

The PHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a regular or interim reexamination. See Chapter 7 for a complete discussion of consent requirements.

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Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]

The PHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's

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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 the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

Failure to Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2012-10]

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA 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, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

HACP Policy:

The *HACP* will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]

The PHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

Lifetime Registered Sex Offenders [Notice PIH 2012-28]

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Should a PHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the PHA must immediately terminate assistance for the household member.

In this situation, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must terminate assistance for the household.

Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, is not residing with his/her parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the PHA must terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and PHA policies or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]

The PHA must immediately terminate program assistance for deceased single member households.

12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS

Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]

HUD requires the PHA to establish policies that permit the PHA to terminate assistance if the PHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

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- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity.
- Any household member has violated the family's obligation not to engage in violent criminal activity.

Use of Illegal Drugs and Alcohol Abuse

HACP Policy:

The *HACP* will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

The *HACP* will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

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

The *HACP* will consider all credible evidence, including but not limited to, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the *HACP* will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the *HACP* 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).

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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.

HACP Policy:

The *HACP* will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

The *HACP* will consider all credible evidence, including but not limited to, 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.

A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the *HACP* will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the *HACP* may, on a case-by-case basis, choose not to terminate assistance.

Other Authorized Reasons for Termination of Assistance

[24 CFR 982.552(c), 24 CFR 5.2005(c)]

HUD permits the PHA to terminate assistance under a number of other circumstances. It is left to the discretion of the PHA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, the Violence against Women Act of 2013 explicitly (VAWA) prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault, or stalking, or human trafficking as reasons for terminating the assistance of a victim of such abuse.

Additionally, per the alternative requirements listed in the *Federal Register* notice dated December 29, 2014, PHAs are no longer permitted to terminate assistance

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to a family due to the family's failure to meet its obligations under the Family Self-Sufficiency (FSS) contract of participation [FR Notice 12/29/14].

HACP Policy:

The *HACP* 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 *HACP* policies.
- Any family member has been evicted from federally-assisted housing in the last ~~five~~*three* years.
- Any *HACP* 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 Section 8 or public housing assistance under the 1837 Act.
- The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- The family has breached the terms of a repayment agreement entered into with the PHA.
- A family member has engaged in or threatened violent or abusive behavior toward ***HACP personnel***.

Abusive or violent behavior towards HACP 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 *HACP* will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the *HACP* may, on a case-by-case basis, choose not to terminate assistance.

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Family Absence from the Unit [24 CFR 982.312]

The family may be absent from the unit for brief periods. The PHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

HACP Policy:

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.F.

Insufficient Funding [24 CFR 982.454]

The PHA may terminate HAP contracts if the PHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

HACP Policy:

The *HACP* will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If the *HACP* determines there is a shortage of funding, prior to terminating any HAP contracts, the *HACP* will determine if any other actions can be taken to reduce program costs.

In the event that the *HACP* decides to stop issuing vouchers as a result of a funding shortfall, and the *HACP* is not assisting the required number of special purpose vouchers (NED families, HUD-Veterans Affairs Supportive Housing (VASH) families, and family unification program (FUP) families), when the *HACP* resumes issuing vouchers, the *HACP* will issue vouchers first to the special purpose voucher families on its waiting list until it has reached the required number of special purpose vouchers, when applicable.

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the *HACP* will terminate HAP contracts as a last resort.

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Prior to terminating any HAP contracts, the *HACP* will inform the local HUD field office. The *HACP* will terminate the minimum number needed in order to reduce HAP costs to a level within the *HACP's* annual budget authority.

If the *HACP* must terminate HAP contracts due to insufficient funding, the *HACP* will do so in accordance with the following criteria and instructions:

HACP will terminate assistance beginning with families that have been on the Section 8 program the longest, with the exception that contracts for elderly and disabled families will not be cancelled unless there are no non-elderly disabled families on HACP's HCV program. Families who lose their assistance due to funding cuts will be placed back on the wait list with a preference. Families comprising the required number of special purpose vouchers, including nonelderly disabled (NED), HUD-Veteran's Affairs Supportive Housing (HUD-VASH), and family unification program (FUP) will be the last to be terminated.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

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12-II.A. OVERVIEW

The PHA is required by regulation to terminate a family's assistance for certain actions or inactions of the family. For other types of actions or inactions of the family, the regulations give the PHA the authority to either terminate the family's assistance or to take another action. This part discusses the various actions the PHA may choose to take when it has discretion and outlines the criteria the PHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notification to the family of the PHA's intent to terminate assistance.

12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

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

- Terminating housing assistance payments under a current HAP contract,

- Refusing to enter into a new HAP contract or approve a lease, 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, the PHA 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)].

HACP Policy:

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 *HACP* request.

Repayment of Family Debts

HACP Policy:

If a family owes amounts to the *HACP*, as a condition of continued assistance, the *HACP* will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the *HACP* of the amount owed. See Chapter 16 for policies on repayment agreements.

12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

Evidence

For criminal activity, HUD permits the PHA 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)].

HACP Policy:

The *HACP* will use the concept of the preponderance of the evidence as

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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.

Use of Criminal Conviction Records after Admission [24 CFR 5.903]

The regulation at 24 CFR 5.903 governs a PHA's access to and use of criminal conviction records obtained from a "law enforcement agency" such as the National Crime Information Center (NCIC), police departments, and other law enforcement agencies that hold criminal conviction records. While the regulatory listing of permitted uses for these records includes PHA screening of applicants for admission to the HCV program, it specifically excludes the use of records for lease enforcement and eviction of HCV participants and excludes by omission a PHA's use of records to terminate assistance for participants. While a PHA has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission, there is no corresponding authority to use these records to check for criminal and illegal drug activity by participants, and therefore, PHAs may not use records for this purpose. The limitations, however, do not apply to criminal conviction information searches from non-federal sources (i.e., sources other than the "law enforcement agencies" defined in 24 CFR 5.902(b)). There is no prohibition that bars a PHA from using non-federal sources to conduct criminal background checks of program participants.

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

The PHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

HACP Policy:

The *HACP* will consider the following facts and circumstances when making its decision to terminate assistance:

The seriousness of the case, especially with respect to how it would affect other residents' safety or property.

The effects that termination of assistance may have on other members of the family who were not involved in the action or failure to act.

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The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, sexual assault ~~or~~, stalking, or human trafficking.

The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future.

While a record of arrest(s) will not be used as the basis for termination, an arrest may, however, trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the *HACP* may obtain the police report associated with the arrest and consider the reported circumstances of the arrest.

The *HACP* may also consider:

- Any statements made by witnesses, or the participant not included in the police report
- Whether criminal charges were filed
- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal.
- Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.

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

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

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family.

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

If the family includes a person with disabilities, the PHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

HACP Policy:

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

12-II.E. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT ~~OR~~, STALKING, OR HUMAN TRAFFICKING

This section describes the protections against termination of assistance that the Violence against Women Act ~~of 2013~~ (VAWA) provides for victims of domestic violence, dating violence, sexual assault ~~and~~, stalking, or human trafficking. For general VAWA requirements, key VAWA definitions, and PHA policies pertaining to notification, documentation, and confidentiality, see section 16-IX of this plan.

VAWA Protections against Termination

VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault or stalking. (*Note:* The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program, as do the limitations discussed under the next heading.)

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

First, VAWA provides that a PHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the PHA, if the move occurred to protect the health or safety of a

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family member who is or has been the victim of domestic violence, dating violence, sexual assault, ~~stalking, or stalking and~~ human trafficking who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(b)(4)].

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Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault ~~or~~ stalking, or human trafficking may not be construed either as a serious or repeated lease violation by the victim or as good cause to terminate the assistance of the victim [24 CFR 5.2005(c)(1)].

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Third, it provides that criminal activity directly related to domestic violence, dating violence, sexual assault or stalking may not be construed as cause for terminating the assistance of a tenant if a member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, ~~or~~ stalking, or human trafficking [24 CFR 5.2005(c)(2)].

Fourth, it gives PHAs the authority to terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009(a)].

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PHAs and owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA [FR Notice 1/4/23].

Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)]

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VAWA does not limit the authority of a PHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault ~~or~~ stalking, or human trafficking so long as the PHA does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].

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Likewise, VAWA does not limit the authority of a PHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault ~~or~~ stalking, or human trafficking if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

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HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily

harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that ~~the~~ potential harm will occur.
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

In order to demonstrate an actual and imminent threat, the PHA must have objective evidence of words, gestures, actions, or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(3)].

HACP Policy:

In determining whether a program participant who is a victim of domestic violence, dating violence, sexual assault ~~or~~, stalking, ~~or human trafficking~~, is an actual and imminent threat to other tenants or those employed at or providing service to a property, the *HACP* will consider the following, and any other relevant, factors:

- Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault ~~or~~, stalking, ~~or human trafficking~~.
- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within an immediate time frame
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat.

If the participant wishes to contest the *HACP's* determination that he or she is an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

Documentation of Abuse [24 CFR 5.2007]

HACP Policy:

When an individual facing termination of assistance for reasons related to

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domestic violence, dating violence, sexual assault ~~or~~, stalking, ~~or~~ human trafficking claims protection under VAWA, the *HACP* will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D. of this plan.

The *HACP* reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the *HACP* will document the waiver in the individual's file.

Terminating the Assistance of a Domestic Violence Perpetrator

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Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives the PHA the explicit authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others" without terminating assistance to "or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant" [24 CFR 5.2009(a)]. This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance. This means that the PHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [~~3/16/07 Federal Register notice on the applicability of VAWA to HUD programs~~FR Notice 3/16/07].

If the perpetrator remains in the unit, the PHA continues to pay the owner until the PHA terminates the perpetrator from the program. The PHA must not stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period ~~will~~ ~~ends~~ mid-month [Notice PIH 2017-08].

If the perpetrator is the only participant eligible to receive assistance, the PHA will provide any remaining participant a chance to establish eligibility for the program. If the remaining participant cannot do so, the PHA will provide them with 30 days to establish eligibility for another housing program prior to termination of the HAP contract.

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HACP Policy:

The *HACP* will terminate assistance to a family member if the *HACP* determines that the family member has committed criminal acts of

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physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, the *HACP* will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to the *HACP* by the victim in accordance with this section and section 16-IX.D. The *HACP* will also consider the factors in section 12-II.D. Upon such consideration, the *HACP* may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the *HACP* does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

12-II.F. TERMINATION NOTICE

HUD regulations require PHAs to provide written notice of termination of assistance to a family only when the family is entitled to an informal hearing. However, since the family's HAP contract and lease will also terminate when the family's assistance terminates [form HUD-52641], it is a good business practice to provide written notification to both owner and family anytime assistance will be terminated, whether voluntarily or involuntarily.

HACP Policy:

Whenever a family's assistance will be terminated, the *HACP* will send a written notice of termination to the family and to the owner. The *HACP* will also send a form HUD-5382 and form HUD-5380 to the family with the termination notice. The notice will state the date on which the termination will become effective. This date generally will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other *HACP* policies, or the circumstances surrounding the termination require.

When the *HACP* notifies an owner that a family's assistance will be terminated, the *HACP* will, if appropriate, advise the owner of his/her right to offer the family a separate, unassisted lease.

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the *HACP* sends to the family must meet the

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additional HUD and PHA notice requirements discussed in section 16-III.C of this plan. ~~VAWA 2013 expands notification requirements to require~~ VAWA requires PHAs to provide notice of VAWA rights and the HUD 5382 form when a PHA terminates a household's housing benefits.

HACP Policy:

Whenever the *HACP* decides to terminate a family's assistance because of the family's action or failure to act, the *HACP* will include in its termination notice the VAWA information described in section 16-IX.C of this plan and a form HUD-5382 and form HUD-5380. The *HACP* will request in writing that a family member wishing to claim protection under VAWA notify the *HACP* within 14 business days.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, the *HACP* must provide a copy of the record to the subject of the record and the tenant so that they have an opportunity to dispute the accuracy and relevance of the record [24 CFR 982.553(d)(2)].
- If immigration status is the basis of a family's termination, as discussed in section 12-I.D, the special notice requirements in section 16-III.D must be followed.

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PART III: TERMINATION OF TENANCY BY THE OWNER

12-III.A. OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; the PHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of assistance as discussed in this section.

12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

Serious or Repeated Lease Violations

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault ~~or~~, stalking, ~~or human trafficking~~, and the victim is protected from eviction by the Violence against Women Act ~~of 2013~~ (VAWA) (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the PHA'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

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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
- Any drug-related criminal activity on or near the premises

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault ~~or~~, stalking, ~~or human trafficking~~ if the tenant or an affiliated individual is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy (see section 12-II.E). The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Evidence of Criminal Activity

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. This is the case except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, sexual assault, ~~or~~ stalking, ~~or human trafficking~~, and the tenant or an affiliated

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individual is the victim or threatened victim of the domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking.

Other Good Cause

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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.
- 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.

If a property is subject to foreclosure, during the term of the lease, the new owner of the property does not have good cause to terminate the tenant’s lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. See Section 13-II.G. for a discussion of PHA policies relating to units in foreclosure.

12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]

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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

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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 the PHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the PHA a copy of any eviction notice (see Chapter 5).

HACP Policy:

If the eviction action is finalized in court, the owner must provide the *HACP* with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]

An owner who has grounds to terminate a tenancy is not required to do so and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action
- The seriousness of the offending action,
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy,
- The extent of participation by the leaseholder in the offending action,
- The effect of termination of tenancy on household members not involved in the offending activity,
- The demand for assisted housing by families who will adhere to lease responsibilities,
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action,
- The effect of the owner's action on the integrity of the program.

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The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault ~~or~~, stalking, ~~or human trafficking~~ is limited by the Violence against Women Act ~~of 2013~~ (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L. (See section 12-II.E.)

12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY'S ASSISTANCE

If a termination is not due to a serious or repeated violation of the lease, and if the PHA has no other grounds for termination of assistance, the PHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

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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 the PHA 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 the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.

HACP Policy:

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All adult members of the family must attend recertification appointments, provide documents and sign documents as required to complete annual and interim recertifications.

- 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~~ deficiencies under the ~~National~~ Standards ~~(HQS)-breach~~ for the Physical Inspection of Real Estate (NSPIRE) by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond ~~normal~~ ordinary wear and tear caused by any member of the household or guest.

HACP Policy:

HACP Policy:

Damages beyond ~~normal~~ ordinary wear and tear will be considered to be damages which could be assessed against the security deposit ~~under~~ state law or in court practice.

- The family must allow the PHA 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.

HACP Policy:

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

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault ~~or~~, stalking, or human trafficking will not be construed as serious or repeated lease violations by the victim [see 24 CFR 5.2005(c)(1)].

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

HACP Policy:

The family must comply with lease requirements regarding written notice

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

- The family must promptly give the *HACP* a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence. The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly notify the PHA 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.

HACP Policy:

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

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

HACP Policy:

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

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

HACP Policy:

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

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be provided to the *HACP* at the start of the extended absence.

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

Part I: Owners in the HCV Program. This part discusses the role of an owner in the PHA’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 the HACP 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.

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PART I. OWNERS IN THE HCV PROGRAM

13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]

Recruitment

PHAs are responsible for ensuring that very low-income families have access to all types and ranges of affordable housing in the PHA's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the PHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the PHA'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.

HACP Policy:

The HACP will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The HACP will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- Distributing printed material about the program to property owners and managers
- Contacting property owners and managers by phone or in-person
- Holding owner recruitment/information meetings at least once a year
- Participating in community-based organizations comprised of private property and apartment owners and managers
- Developing working relationships with owners and real estate brokers associations

Outreach strategies will be monitored for effectiveness and adapted accordingly.

Retention

In addition to recruiting owners to participate in the HCV program, the PHA must also provide the kind of customer service that will encourage participating owners to remain active in the program.

HACP Policy:

All HACP activities that may affect an owner's ability to lease a unit will be

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processed as rapidly as possible, in order to minimize vacancy losses for owners.

The HACP will provide owners with a handbook that explains the program, including HUD and HACP policies and procedures, in easy-to-understand language.

The HACP will give special attention to helping new owners succeed through activities such as:

Providing the owner with a designated HACP contact person.

Coordinating inspection and leasing activities between the PHA, the owner, and the family.

Initiating telephone contact with the owner to explain the inspection process and providing an inspection booklet and other resource materials about HUD housing quality standards.

Providing other written information about how the program operates, including answers to frequently asked questions.

Additional services may be undertaken on an as-needed basis, and as resources permit.

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires the PHA to assist families in their housing search by providing the family with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the PHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the PHA 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)].

HACP Policy:

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit must notify the HACP. The HACP will direct applicants to the City of Pittsburgh website with a listing of such owners and provide instructions to this link to the HCV family as part of the informational briefing packet.

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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 unassisted tenant. The HACP 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 the HACP, 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 requirements for the approval of an assisted tenancy.

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. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality National Standards (HQS for the Physical Inspection of Real Estate (NSPIRE)) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The HACP will inspect the owner's dwelling unit at least annually/biennially to ensure that the unit continues to meet HQS inspection requirements. See chapter/Chapter 8 for a discussion of the HQS/NSPIRE inspection standards and policies for HQS inspections at initial lease-up and throughout the family's tenancy.

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The HACP must determine that the proposed rent for 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, if the gross rent exceeds the applicable payment standard, the HACP must ensure that the family share does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. ***The HUD Tenancy Addendum includes the HUD requirements governing the tenancy and must be added word-for-word to the owner's lease.*** See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The HACP and the owner must execute a Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HUD requirements for execution of the HAP contract.

13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Complying with all of the owner's obligations under the housing assistance payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the ~~Housing Quality National Standards (HQSN)~~ for the Physical Inspection of Real Estate (NSPIRE), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the PHA information required under the HAP contract
- Collecting the security deposit, the tenant rent, and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services that are not the responsibility of the family as specified in the lease

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- Allowing reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence against Women **Reauthorization Act of 2013** (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family (see 24 CFR Part 5, Subpart L; 24 CFR 982.310(h)(4); and 24 CFR 982.452(b)(1-3)); and **FR Notice 1/4/23**)

13-I.D. OWNER QUALIFICATIONS

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA 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)]

The PHA must not approve the assisted tenancy if the PHA 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 the PHA 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]

The HACP **must not** approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The HACP 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. 8-18]

The HACP must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the PHA (except a participant commissioner)

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- Any employee of the HACP, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

Such “covered individual” may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or for one year thereafter.

Immediate family member means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister, or brother (including a stepsister or stepbrother) of any covered individual

HUD may waive the conflict-of-interest requirements, except for members of Congress, for good cause. The HACP must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the HACP must include the following [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 and statement of consistency with state and local laws. The local HUD office, the HACP, 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 the HACP or assistance under the HCV program for an eligible HACP employee,

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explanation of the responsibilities and duties of the position, including any related to the HCV program,

- If the case involves an investment on the part of a member, officer, or employee of the HACP, description of the nature of the investment, including disclosure/divestiture plans.

Where the HACP has requested a conflict-of-interest waiver, the HACP may not execute the HAP contract until HUD has made a decision on the waiver request.

HACP Policy:

In considering whether to request a conflict of interest waiver from HUD, the HACP will consider certain factors such as consistency of the waiver with state and local laws, the existence of alternative housing available to the family, the individual circumstances of a particular family, the specific duties of the individual(s) 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 the HACP to disapprove a request for tenancy for various actions and inactions of the owner.

If the HACP 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].

HACP Policy:

The HACP will refuse to approve a request for tenancy if the HACP becomes aware that any of the following are true:

- The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (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,

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- The owner has a history or practice of non-compliance with the **HQS inspection standards** 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, employees of the PHA, or of owner employees or other persons engaged in management of the rental unit.
 - (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) (iv) involves 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; or
- The owner has not paid state or local real estate taxes, fines, or assessments.

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In considering whether to disapprove owners for any of the discretionary reasons listed above, the PHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, the PHA may, on a case-by-case basis, choose to approve an owner.

Legal Ownership of Unit

The following represents HACP Policy: on legal ownership of a dwelling unit to be assisted under the HCV program.

HACP Policy:

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The HACP 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, management agreement).

13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]

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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 the HACP.

The owner must cooperate with the HACP and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with the HACP.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

PART II. HAP CONTRACTS

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13-II.A. OVERVIEW

The HAP contract represents a written agreement between the HACP and the owner of the dwelling unit occupied by a HCV assisted family. The contract states the owner's responsibilities under the program, as well as the HACP's obligations. Under the HAP contract, the HACP agrees to make housing assistance payments to the owner on behalf of the family approved by the HACP to occupy the 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 use their assistance to lease the space for the manufactured home. See chapter 15 for a discussion of any special housing types included in the HACP's HCV program.

When the HACP has determined that the unit meets program requirements and the tenancy is approvable, the HACP and owner must execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

13-II.B. HAP CONTRACT CONTENTS

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The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641. The HAP contract contains three parts.

Part A of the contract includes basic contract information: the names of the tenant and all household members, the address of the contract unit, start and end dates of initial lease term, the amount of initial monthly rent to owner, the amount of initial housing assistance payment, the utilities and appliances to be supplied by owner and tenant, and the signatures of the HACP representative and owner [HCV Guidebook, pp. 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. HACP Policy: on the amount of security deposit an owner may collect is found in Chapter 9.

PHAs also have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the HACP is deemed received by the owner (e.g., upon mailing by the HACP or actual receipt by the owner).

HACP Policy:

The HACP has not adopted a policy that defines when the housing assistance payment by the HACP 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

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- Exclusion of Third-Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the HACP. The tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

13-II.C. HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, the HACP must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month. The amount of the HAP payment is determined according to the policies described in Chapter 6 and is subject to change during the term of the HAP contract. The HACP must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by the HACP is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant and the HAP payment is equal to the rent to owner as specified in the lease.

The family is not responsible for payment of the HAP payment, and the HACP is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the rent to 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

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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 the HACP, the excess amount must be returned immediately. If the HACP determines that the owner is not entitled to all or a portion of the HAP, the HACP may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

Owner Certification of Compliance

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from the HACP, 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^{NSPIRE} standards**; 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)]

The HACP 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 late penalties if the HACP 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.

The HACP is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the HACP's control. In addition, late payment penalties are not required if the HACP intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

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Termination of HAP Payments [24 CFR 982.311(b)]

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The HACP must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the HACP must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

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HACP Policy:

The owner must inform the HACP when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

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The owner must inform the HACP when the owner has obtained a court judgment or other process allowing the owner to evict the tenant and provide the HACP 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 HACP will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the HACP of the date when the family actually moves from the unit or the family is physically evicted from the unit.

13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]

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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 [HQ\\$N\\$PIRE standards.](#)
- If the owner has violated any obligation under any other HAP contract under Section 8

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- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If the HACP determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

The HACP 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 of the HAP contract. The HACP may also obtain additional relief by judicial order or action.

The HACP must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The HACP must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

HACP Policy:

Before the HACP exercises a remedy against an owner, the HACP will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the HACP 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 HACP will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

13-II.E. HAP CONTRACT TERM AND TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the

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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,
- The HACP terminates the HAP contract,
- The HACP 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 the HACP made the last housing assistance payment to the owner,
- The family is absent from the unit for longer than the maximum period permitted by the HACP,
- The Annual Contributions Contract (ACC) between the HACP and HUD expires.
- The HACP elects to terminate the HAP contract.

HACP Policy:

The HACP 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~~Chapter 8,
- The unit does not meet ~~HQSN~~SPIRE standards [24 CFR 982.404] – see ~~chapter~~Chapter 8,
- The family breaks up [HUD Form 52641] – see ~~chapter~~Chapter 3,
- The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the ~~HACPPHA~~ terminates the HAP contract, the ~~HACPPHA~~ must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV

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Guidebook pg. 15-4].

HACP Policy:

~~In all cases~~Generally, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the HACPPHA gives written notice to the owner.

~~The PHA cannot make any HAP payment for any month after the month the family vacates the unit.~~

The owner is not entitled to any housing assistance payment after this period and must return to the HACPPHA 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~~will be required [HCV GB, p.11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

**13-II.F. CHANGE IN OWNERSHIP/ASSIGNMENT OF THE HAP CONTRACT
[HUD-52641]**

The HAP contract cannot be assigned to a new owner without the prior written consent of the HACP.

An owner under a HAP contract must notify the HACP in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the HACP.

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 the HACP finds acceptable. The new owner must provide the HACP with a copy of the executed agreement.

HACP Policy:

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

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The HACP must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within **10 business days** of receiving the owner's request, the HACP will inform the current owner in writing whether the assignment may take place.

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The new owner must provide a written certification to the HACP that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed,
- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner,
- The effective date of the HAP contract assignment,
- A written agreement to comply with the terms of the HAP contract; and
- A certification that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the HACP 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 HACP will process the leasing in accordance with the policies in Chapter 9.

13-II.G. FORECLOSURE [Notice PIH 2010-49]

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Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). During the term of the lease, the new owner of the property does not have good cause to terminate the tenant's lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. Further, the new owner assumes interest in the lease between the prior owner and the tenant and to the HAP contract.

Any state or local law that provides longer time periods or other additional

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protections for tenants also applies.

HACP Policy

If a property is in foreclosure, HACP will make all reasonable efforts to determine the status of the foreclosure and ownership of the property and will continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.

HACP will attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. This will include a request for owner information, including a tax identification number and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.

HACP will inform the tenant that they must continue to pay rent in accordance with the lease, and if the new owner refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute ~~an~~ independent groundgrounds for eviction.

In the event that HACP is unable to make HAP payments to the new owner due to an action or inaction by the new owner that prevents such payments (e.g., rejection of payments or failure to maintain the property according to HQSN SPIRE standards), or due to an inability to identify the new owner, HACP will either use the funds to pay:

- The utilities that are the owner's responsibility after taking reasonable steps to notify the owner; except that if the unit has been or will be rendered uninhabitable due to termination or threat of termination of service, prior notice is not required. In the latter case, HACP shall notify the owner within a reasonable time after making the utility payment; or
- For the family's reasonable moving costs, including security deposit costs. HACP will also refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant's rights and enforcement of the successor in interest's performance under the HAP contract. See Section 12-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

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Chapter 14

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PROGRAM INTEGRITY

INTRODUCTION

The HACP is committed to ensuring that subsidy funds made available to the HACP are spent in accordance with HUD requirements.

This chapter covers HUD and HACP 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 HACP policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the HACP must and may take when errors or program abuses are found.

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

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14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and detecting program abuse. PHAs are required to use the EIV system ~~in its entirety~~ at annual reexamination in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

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- Provide applicants and participants with form HUD-52675, "Debts Owed to PHAs and Terminations".
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file.

HACP Policy:

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To ensure that the PHA's HCV program is administered according to the highest ethical and legal standards, the HACP will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

- The HACP will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.
- The HACP will provide each applicant and participant with a copy of "Is Fraud Worth It?" (Form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.
- The HACP will provide each applicant and participant with a copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-18. In addition, the HACP will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.
- The HACP will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key HACP forms and form letters that request information from a family or owner.
- HACP staff will be required to review and explain the contents of all HUD and PHA-required forms prior to requesting family member signatures.
- At every regular reexamination, HACP staff will explain any changes in HUD regulations or HACP Policy that affect program participants.
- The HACP will require first-time owners (or their agents) to participate in a briefing session on HAP contract requirements.
- The HACP will provide owners with ongoing information about the program, with an emphasis on actions and situations to avoid.
- The HACP will provide each HACP employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. Program abuse or fraud refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

14-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, the PHA will use a variety of activities to detect errors and program abuse.

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Quality Control and Analysis of Data

Under the Section 8 Management Assessment Program (SEMAP), HUD requires the PHA 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 with NSPIRE standards** [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

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HACP Policy:

In addition to the SEMAP quality control requirements, the HACP will employ a variety of methods to detect errors and program abuse.

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- The HACP routinely will use HUD and other non-HUD sources of up-front income verification. This includes "The Work Number" and any other private or public databases available to the HACP.
- 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 HACP 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 the PHA of errors and potential cases of program abuse.

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HACP Policy:

The HACP 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 HACP's error detection and abuse prevention efforts.

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Individual Reporting of Possible Errors and Program Abuse

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HACP Policy:

The HACP will encourage staff, program participants, and the public to report possible program abuse.

14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When the PHA Will Investigate

HACP Policy:

The HACP 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 HACP 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 HACP will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

Consent to Release of Information [24 CFR 982.516]

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require HCV families to sign consent forms for the release of additional information.

Credit Bureau Inquiries

In cases involving unreported income sources or unreported assets, a Credit Bureau inquiry may be made to determine if there is financial activity that conflicts with the reported income of the family.

Employers and Ex-Employers

Employers and ex-employers may be contacted to verify wages that may have been previously undisclosed or misrepresented.

Neighbors / Witnesses

Neighbors and/or witnesses may be interviewed who are believed to have direct or indirect knowledge of facts pertaining to HACP's review. Other Agencies Investigators, caseworkers or representative of other benefit agencies may be contacted. Local, state, or federal law enforcement officials may also be

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contacted. Public Records If relevant, HACP will review public records kept in any jurisdictional courthouse. Examples of public records include but are not limited to records relating to the following: real estate, marriage, divorce, uniform commercial code financing statements, voter registration, judgments, court or police records, state wage records, utility records and postal records.

Interviews with The Head of Household

HACP will discuss the allegations (or details thereof) with the Head of Household or family member by scheduling an appointment at the appropriate HACP office. A high standard of professionalism and courtesy will be maintained by HACP staff person who conducts such interviews. Under no circumstances will inflammatory language, accusations, or any unprofessional conduct or language be tolerated. If possible, an additional staff person will attend such interviews.

Analysis and Findings

HACP Policy:

The HACP 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 HACP will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the PHA, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether the PHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

HACP Policy:

In the case of family-caused errors or program abuse, the HACP 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

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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 HACP 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

HACP Policy:

The HACP 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 HACP determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).

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PART II: CORRECTIVE MEASURES AND PENALTIES

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14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

Corrections

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Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the PHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

HACP Policy:

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Increases in the family share will be implemented on the first of the month following a written 30-day notice.

Any decreases in family share will become effective the first of the month following the discovery of the error.

Reimbursement

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Whether the family or owner is required to reimburse the PHA or the PHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the PHA to use incorrect information provided by a third party.

Family Reimbursement to PHA [HCV GB pp. 22-12 to 22-13]

HACP Policy:

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The HACP 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 HACP will terminate the family's assistance in accordance with the policies in Chapter 12.

PHA Reimbursement to Family [HCV GB p. 22-12]

HACP Policy:

The HACP will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

Prohibited Actions

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the PHA [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)].

HACP Policy:

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Any of the following will be considered evidence of family program abuse:

- Payment to the owner in excess of amounts authorized by the HACP for rent, security deposit, and additional services.
- Offering bribes or illegal gratuities to the Governing Board of the HACP, employees, contractors, or other HACP 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 HACP on the family's behalf.
- Use of a false name or the use of falsified, forged, or altered documents.
- Intentional misreporting of family information or circumstances (e.g., income, family composition).
- Omitted facts that were obviously known by a family member (e.g., not reporting employment income).
- Admission of program abuse by an adult family member.

The HACP 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 the PHA may, at its discretion, impose any of the following remedies.

- The PHA may require the family to repay excess subsidy amounts paid by the PHA, as described earlier in this section.
- The PHA 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).
- The PHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The PHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., [HQ\\$N\\$PIRE](#) compliance, fair housing) are addressed in

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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 the PHA

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the PHA any excess subsidy received. The PHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the PHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

HACP Policy:

In cases where the owner has received excess subsidy, the HACP 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 the PHA [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:

HACP Policy:

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by the HACP.
- 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.

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- Knowingly accepting incorrect or excess housing assistance payments.
- Offering bribes or illegal gratuities to the Governing Board of the Housing Authority, employees, contractors, or other HACP representatives.
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the HACP.
- Residing in the unit with an assisted family.

Remedies and Penalties

When the PHA determines that the owner has committed program abuse, the PHA 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.

14-II.D. 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 the PHA 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 the PHA

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by PHA staff [HCV-GB-22-12].

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PHA Reimbursement to Family or Owner

The PHA must reimburse De Minimis Errors [24 CFR 5.609(c)(4)]

The PHA will not be considered out of compliance when making annual income determinations solely due to de minimis errors in calculating family income. A de minimis error is an error where the PHA determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

PHAs must take corrective action to credit or repay a family if the family was overcharged rent, including when PHAs make de minimis errors in the income determination. Families will not be required to repay the PHA in instances where the PHA miscalculated income resulting in a family being undercharged for rent. PHAs state in their policies how they will repay or credit a family the amount they were overcharged as a result of the PHA's de minimis error in income determination.

HACP Policy:

The HACP will credit a family for any underpaymentfamily overpayment of subsidyrent, regardless of whether the underpaymentoverpayment was the result of staff-caused error, staff program abuse, or staff or owner program abuse. Funds for this reimbursement must come from the PHA's administrative fee reserves [HCV GB p. 22-12].a de minimis error.

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Prohibited Activities

HACP Policy:

Any of the following will be considered evidence of program abuse by HACP 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 HACP.
- Disclosing confidential or proprietary information to outside parties
- Gaining profit as a result of insider knowledge of HACP activities,

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policies, or practices

- Misappropriating or misusing HCV funds
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program.
- Committing any other corrupt or criminal act in connection with any federal housing program

14-II.E. CRIMINAL PROSECUTION

HACP Policy:

When the HACP determines that program abuse by an owner, family, or HACP staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the HACP will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES

The PHA may retain a portion of program fraud losses that the PHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The PHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. Section 24 CFR 792.202 permits the PHA to retain the greater of:

- (50%) fifty percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the PHA 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 the PHA related to the collection, these costs

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must be deducted from the amount retained by the PHA.

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Chapter 15

SPECIAL HOUSING TYPES

[24 CFR 982 Subpart M]

INTRODUCTION

The PHA may permit a family to use any of the special housing types discussed in this chapter. However, the PHA 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. The PHA 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. Unless specifically modified by the regulations, NSPIRE standards apply to special housing types (Single Room Occupancy, Congregate Housing, Group Homes, Shared Housing, Manufactured Homes, Homeownership units) [Notice PIH 2023-28].

HACP Policy:

In most instances, families may 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.

However, policy language is included in this chapter where relevant in the event the HACP does grant use as a reasonable accommodation.

Special housing types include single room occupancy, 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]

15-I.A. OVERVIEW

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for SRO housing is 75 percent of the zero-bedroom payment standard amount on the PHA's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero-bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

15-I.C. HOUSING QUALITY NATIONAL STANDARDS (HQSFOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE))

HQSNSPIRE 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

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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 (4) 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.

For SRO housing, 24 CFR 5.703(d) only applies to the extent that the SRO unit contains the room or facility referenced in 24 CFR 5.703(d). Because no children live in SRO housing, the ~~housing quality~~ NSPIRE standards applicable to lead-based paint do not apply.

PART II: CONGREGATE HOUSING

[24 CFR 982.606 through 982.609]

15-II.A. OVERVIEW

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the PHA, a family member or live-in aide may reside with the elderly person or person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

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When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the PHA must use the payment standard for a zero-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the PHA must use the one-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

15-II.C. HOUSING QUALITY NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

HQS NSPIRE requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing is not subject to the requirement that the dwelling unit must have a kitchen area. In place of the NSPIRE standards related to food preparation and refuse disposal, 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 NSPIRE standards applicable to lead-based paint do not apply.

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PART III: GROUP HOME

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

15-III.A. OVERVIEW

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the PHA, a live-in aide may live in the group home with a person with disabilities. The PHA must approve a live-in ~~aide~~aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be zero- or one-bedroom, depending on the PHA's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the ~~pro-~~pro-rata share of the payment standard for the group home size. The ~~pro-~~pro-rata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

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The utility allowance for an assisted occupant in a group home is the pro-rata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the pro-rata portion of the reasonable rent for the group home. In determining reasonable rent, the PHA should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15-III.C. HOUSING QUALITY NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

The entire unit must comply with NSPIRE requirements described in Chapter 8, except for the standards that relate to sanitary facilities, food preparation and refuse disposal, space and security, structure and materials, and site and neighborhood and stated below.

NSPIRE 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

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health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:

- Dangerous walks or steps
- Instability
- Flooding, poor drainage
- Septic tank back-ups
- Sewage hazards
- Mud slides
- Abnormal air pollution
- Smoke or dust
- Excessive noise
- Vibrations or vehicular traffic
- Excessive accumulations of trash
- Vermin or rodent infestation, and
- Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

PART IV: SHARED HOUSING

[24 CFR 982.615 through 982.618]

15-IV.A. OVERVIEW

Families in markets with tight rental conditions or with a prevalence of single-family housing may determine a shared housing living arrangement to be a useful way to secure affordable housing. PHAs offering shared housing as a housing solution may also experience some reduction in the average per-unit-cost (PUC) paid on behalf of assisted families.

Shared housing is a single housing unit occupied by an assisted family and another resident or other 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

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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 the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

HACP Policy:

The HACP does not administer the Shared Housing Program, but will provide information to families regarding the shared housing option, including a listing to families of any known for-profit or nonprofit shared housing matching services in nearby communities at briefing, and upon request. Families will be advised they can conduct their own internet search. Families will be cautioned to not enter into any rental agreement or pay any deposit or rental payment until the tenancy is approved by the PHA.

PHAs should be aware of potential local legal barriers to HCV participants using shared housing, which can create additional obstacles for shared housing:

- Municipalities may have occupancy limits for the number of unrelated persons who may share a housing unit.
- Local zoning codes for single family housing may restrict occupancy in certain areas to households whose family members are related by blood.

PHAs should work with local jurisdictions to find solutions that encourage affordable housing and are consistent with the Fair Housing Act, Title VI, and other federal, state, and local fair housing laws. PHAs should inform HUD if they encounter barriers to shared housing that may conflict with fair housing laws.

HACP Policy:

The HACP does not administer the Shared Housing Program but will work with local jurisdictions as necessary to identify solutions consistent with fair housing laws and will inform HUD if the PHA encounters barriers to shared housing that conflict with fair housing laws.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: "This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: (Shared housing)".

15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the pro-rata share of the payment standard for the shared housing unit size.

The pro-rata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the lower of the utility allowance for the family unit size (voucher size) or the pro-rata share of the utility allowance for the shared housing unit.

Example: A family holds a 2-bedroom voucher. ~~The family decides to occupy 3 out of 4~~

~~Shared housing unit size; bedrooms available to assisted family = 2~~

~~Total bedrooms in the unit: 3~~

~~The utility allowance for a 4-bedroom assisted family ÷ 3 Bedrooms in the unit equals \$200~~

~~The utility allowance for a 2-bedroom unit equals \$100~~

~~The .667 pro-rata share of the utility allowance~~

~~2 BR payment standard: \$1200~~

~~3 BR payment standard: \$1695 \$1695 x .667 (pro rata share) = \$1131 \$1131 is \$150 (3/4 of \$200)~~

~~The PHA will use the 2-bedroom utility allowance of \$100 lower than the \$1200 payment standard for the 2 BR family unit size \$1131 is the payment standard used to calculate the HAP~~

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted family living in shared housing is the pro rata share of the utility allowance for the shared housing unit.

Example: A family holds a 2-bedroom voucher. The family decides to occupy 3 out of 4 bedrooms available in the unit.

The utility allowance for a 4-bedroom unit equals \$200

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The utility allowance for a 2-bedroom unit equals \$100

The pro rata share of the utility allowance is \$150 (3/4 of \$200)

The PHA will use the 2-bedroom utility allowance of \$100.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the PHA should consider whether sanitary and food preparation areas are private or shared.

15-IV.C. HOUSING QUALITY NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

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The PHA 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.

HQSNSPIRE requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family*: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security*: The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A zero-bedroom or one-bedroom unit may not be used for shared housing.

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PART V: COOPERATIVE HOUSING

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[24 CFR 982.618]

15-V.A. OVERVIEW

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a

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cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

15-V.C. HOUSING QUALITY NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

All standard HQS NSPIRE requirements apply to cooperative housing units. There are no additional HQS NSPIRE requirements. The PHA remedies described in 24 CFR 982.404 do not apply. Rather, if the unit and premises are not maintained in accordance with NSPIRE standards, the PHA may exercise all available remedies regardless of whether the family or cooperative is responsible for the breach of NSPIRE standards.

No housing assistance payment can be made unless unit meets NSPIRE standards and the defect is corrected within the period as specified by the PHA and the PHA verifies correction (see Chapter 8).

In addition to regular NSPIRE deficiencies, breaches of NSPIRE standards by the family include failure to perform any maintenance for which the family is responsible in accordance with the terms of the cooperative occupancy agreement [HCV GB].

PART VI: MANUFACTURED HOMES

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15-VI.A. OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and the PHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special **HQSNSPIRE** 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 as well as certain other housing expenses. PHAs may, but are not required to, provide assistance for such families.

15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOMEOWNERS WHO LEASE A SPACE

Family Income

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

Lease and HAP Contract

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION [FR Notice 1/18/17]

Payment Standards

The PHA payment standard for manufactured homes is determined in accordance with 24 CFR 982.505 and is the payment standard used for the PHA's HCV program. It is based on the applicable FMR for the area in which the manufactured home space is located.

The payment standard for the family is the lower of the family unit size (voucher
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size) or the payment standard for the number of bedrooms in the manufactured home.

Utility Allowance

The PHA must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

If the amount of the monthly assistance payment for a family exceeds the monthly rent for the manufactured home space (including the owner's monthly management and maintenance charges), the PHA may pay the remainder to the family, lender, or utility company.

Space Rent

The rent for the manufactured home space (including other eligible housing expenses) is the total of:

- The rent charged for the manufactured home space,
- Owner maintenance and management charges for the space,
- The monthly payments made by the family to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and
- The applicable allowance for tenant-paid unities.

Amortization Costs

The monthly payment made by the family to amortize the cost of purchasing the manufactured home is the debt service established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home may not be included in the amortization cost. Debt service for set-up charges incurred by a family may be included in the monthly amortization payments made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

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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 manufactured home space rent (including other eligible housing expenses) minus the TTP.

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Rent Reasonableness

Initially, and annually thereafter the PHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The PHA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the manufactured home park or elsewhere.

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15-VI.D. HOUSING QUALITY NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

Under either type of occupancy described in 15-VI.A. above, the manufactured home must meet all HQS NSPIRE performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

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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.

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PART VII: HOMEOWNERSHIP

[24 CFR 982.625 through 982.643]

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15-VII.A. OVERVIEW [24 CFR 982.625]

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The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option may be newly admitted or an existing participant in the HCV program. The PHA must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

HACP Policy:

The HACP has instituted a minimum homeowner down payment requirement of at least three percent of the purchase price and requires that at least one percent of the purchase price come from the family's personal resources.

There are two forms of homeownership assistance described in the regulations: monthly homeownership assistance payments and single down payment assistance grants. However, PHAs may not offer down payment assistance until and unless funding is allocated by Congress. Since this has not yet happened, only monthly homeownership assistance may be offered.

HACP Policy:

The HACP will offer the monthly homeownership assistance payments to qualified families.

The PHA must offer homeownership assistance if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The PHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

15-VII.B. FAMILY ELIGIBILITY [24 CFR 982.627]

The family must meet all of the requirements listed below before the commencement of homeownership assistance. The PHA may also establish additional initial requirements as long as they are described in the PHA administrative plan.

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- The family must have been admitted to the Housing Choice Voucher program.

The family must qualify as a first-time homeowner or **may** be a cooperative member.

HACP Policy:

A first-time home buyer means that no member of the household has had any interest or ownership in any residence during **the three years before applying for homeownership assistance** or at the commencement of participation in the homeownership program. The purchaser must sign a sworn application attesting that they have not owned a home. In addition, the last three years tax returns may be required to ascertain that no mortgage interest or real estate tax deductions have been claimed. Single parents or displaced homemakers who owned a home while married or resided in a home owned by a spouse also qualify as first-time homebuyers.

The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2,000, based on the income of adult family members who will own the home. The PHA may establish a higher income standard for families. However, a family that meets the federal minimum income requirement (but not the PHA's requirement) will be considered to meet the minimum income requirement if it can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.

HACP Policy:

The HACP may not establish a higher minimum income standard for disabled and/or non-disabled families.

HACP Policy:

Calculation of income-eligibility for the HCV Homeownership Program for the purpose of determining income-eligibility for admission to the program will be conducted under the guidelines for HCV rental assistance as noted in this Administrative Plan.

- a) The head of household, spouse or other adult member(s) of the household that will hold title to the home must have a combined annual gross income of not less than \$10,300 or 30% of the Median Family Income adjusted for the family size and must not exceed 80% of the Median Family Income as determined by HUD.

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b) A family that does not meet this requirement, but does meet all other HOME OWNERSHIP PROGRAM requirements, may request a waiver provided the family can demonstrate that:

- Head of household, spouse or other adult member(s) of the household that will hold title to the home have a combined annual gross income of not less than the California State minimum wage multiplied by 2,000 and,
- Family is able to secure a mortgage and the total housing cost to the family will not exceed thirty five percent (35%) of the family's total gross monthly income

c) Welfare assistance may not be included in the minimum gross annual income above, except for elderly or disabled families. Welfare assistance includes payments from Temporary assistance for Needy Families (TANF), Supplementary Security Income (SSI) that is subject to an income eligibility test, food stamps, general assistance (GA); or other welfare assistance as specified by HUD.

- For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family.

HACP Policy:

The HACP has the following guidelines for a family to be eligible:

- a) One or more adult members of the household that will hold title to the home must be currently employed and working not less than average of 30 hours of per week and has been

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Housing Authority of the City of Pittsburgh
continuously employed for one (1) year prior to application to
the Home Ownership Program.

- b) Employment requirements do not apply to elderly or disabled families that otherwise qualify for Home Ownership Program.
- c) A family with a member with disabilities may request an exemption from the work requirements if needed as a reasonable accommodation for the disabled family member.
- d) The HACP may also consider whether and to what extent an employment interruption is considered permissible in satisfying the employment requirement. The HACP may also consider successive employment during the one-year period and self-employment in a business.

e) The HACP will count self-employment in a business when determining whether the family meets the employment requirement.

- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, the PHA must grant an exemption from the employment requirement if the PHA determines that it is needed as a reasonable accommodation.
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option.
- Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered into a contract of sale in accordance with 24 CFR 982.631(c).

HACP Policy:

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The HACP has the following additional guidelines for a family to be eligible:

1. Minimum down payment requirement

Each participating family must demonstrate the ability to provide the minimum down payment requirement. Funds that are required cannot come from any outside source; they must come directly from the borrower.

- a) At least one percent (1%) of the purchase price must come from the family personal resources.

2. Other requirements

- a) The family must have completed an initial HCV lease term and completed the family's first annual certification in the HCV Program. The family must terminate a current lease agreement in compliance with the lease when transitioning into homeownership.
- b) The family must verify that no family member has previously defaulted on a mortgage assisted under the HCV Home Ownership Program.

The head of household and any other adult members that will hold title to the home must successfully complete a counseling program that has been deemed acceptable by the HACP. The HACP may require ongoing counseling for participants in the program. Family members may not owe any debt to the HACP or another HACP.

- a) The family must maintain a good tenant standing with its landlord and the HACP. This includes, but is not limited to:
 - In compliance with HUD Family Obligations under the HCV Program
 - Adhering to the requirements of the lease agreement
 - No outstanding debts to the landlord or to any utility company,
 - Report all household income
 - Passing the most recent ~~Uniform Physical Condition Standards for Vouchers (UPCS-V)~~ NSPIRE standards for inspection with no significant tenant caused failure items.
 - The family has had no family-caused violations of HUD's NSPIRE standards within the past year.
 - The family is not within the initial one-year period of a

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HAP Contract.

- The family owes no money to the PHA.
- The family has not committed any serious or repeated violations of a PHA-assisted lease within the past year.

15-VII.C. SELECTION OF FAMILIES [24 CFR 982.626]

Unless otherwise provided (under the homeownership option), the PHA may limit homeownership assistance to families or purposes defined by the PHA and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in the PHA administrative plan.

If the PHA limits the number of families that may participate in the homeownership option, the PHA must establish a system by which to select families to participate.

HACP Policy:

The HACP will administer up to five new homeownership units per year. The HACP may exceed the number of units planned per year if it is necessary as a reasonable accommodation for a person with a disability. If this occurs, the HACP may reduce the number of homeownership units offered in subsequent years.

Families who have been participating in an economic self-sufficiency program for at least six months, or have graduated from such a program, will be given preference over other families. Elderly and disabled families will automatically be given this preference.

Within preference and non-preference categories, families will be selected according to the date and time their application for participation in the homeownership option is submitted to the HACP.

All families must meet eligibility requirements as defined in Section 15-VII.B. of this plan.

15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]

In order for a unit to be eligible, the PHA must determine that the unit satisfies all of the following requirements:

- The unit must meet HUD's "eligible housing" requirements. The unit may not be any of the following:
 - A public housing or Indian housing unit,

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- A unit receiving Section 8 project-based assistance,
 - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services,
 - A college or other school dormitory,
 - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale.
 - The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
 - The unit must have been inspected by the PHA and by an independent inspector designated by the family.
 - The unit must meet ~~Housing Quality~~NSPIRE Standards (see Chapter 8).
 - For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.

HACP Policy:

The following unit types may be purchased using the HCV Home Ownership Program

- A one-unit property (single family residence)
- A single dwelling unit in a cooperative, condominium or planned use development.
- A manufactured home with a permanent foundation if the family has the right to occupy the same site for a period of at least forty (40) years.
- The unit must be seller occupied or vacant for at least ninety (90) days; an exception is where the tenants are purchasing the unit in which they have been residing.

For PHA-owned units all of the following conditions must be satisfied:

- The PHA informs the family, both verbally and in writing, that the family has the right to purchase any eligible unit and a PHA-owned unit is freely selected by the family without PHA pressure or steering,
- The unit is not ineligible housing,
- The PHA obtains the services of an independent agency to inspect the unit for compliance with ~~HQS~~NSPIRE, review the independent inspection

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report, review the contract of sale, determine the reasonableness of the sales price and any PHA provided financing. All of these actions must be completed in accordance with program requirements.

The PHA must not approve the unit if the PHA has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

15-VII.E. ADDITIONAL PHA REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629]

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It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. The PHA may establish the maximum time that will be allowed for a family to locate and purchase a home and may require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

HACP Policy:

The family will be allowed 120 days to identify a unit and submit a sales contract to the HACP for review. The family will be allowed an additional 120 days to close on the home. PHAs may grant extensions to either of these periods for good cause. The length of the extension(s) will be determined on a case-by-case, but in no case will an extension exceed a total of 125 days. The maximum amount of time a family will be given to locate and complete the purchase of a home under the homeownership option is 365 days.

During these periods, the family will continue to receive HCV rental assistance in accordance with any active lease and HAP contract until the family vacates the rental unit for its purchased home.

All requests for extensions must be submitted in writing to the PHA prior to the expiration of the period for which the extension is being requested. The HACP will approve or disapprove the extension request within **10 business days**. The family will be notified of the HACP's decision in writing.

The family will be required to report their progress on locating and purchasing a home to the HACP every 30 days until the home is purchased.

If the family cannot complete the purchase of a unit within the maximum

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required time frame, and is not receiving rental assistance under a HAP contract at the time the search and purchase time period expires, the family will be issued a voucher to lease a unit.

Search Time:

The family's deadline date for locating a home to purchase will be 180-days from the date the family is issued a homeownership voucher. The family will be issued a homeownership voucher once they have completed all required pre-purchase counseling and have received a mortgage pre-approval. Extensions may be granted on a case-by-case basis.

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Reporting:

HACP will require periodic reports on the family's progress in finding and purchasing a home. The family will provide such reports on a monthly basis to the Homeownership Coordinator or Authority designated representative.

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If Family is Unable to Purchase:

If the family is unable to purchase a home within the maximum time limit, the HACP will issue the family a voucher to lease a unit provided the family is in compliance with Section 8 Housing Choice Voucher program rules.

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15-VII.F. HOMEOWNERSHIP COUNSELING [24 CFR 982.630]

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the PHA. HUD suggests the following topics for the PHA-required pre-assistance counseling:

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- Home maintenance (including care of the grounds),
- Budgeting and money management,
- Credit counseling,
- How to negotiate the purchase price of a home,
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing,

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- How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction,
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas,
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

The PHA may adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families.

The PHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the PHA offers a program of ongoing counseling for participants in the homeownership option, the PHA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If the PHA does not use a HUD-approved housing counseling agency to provide the counseling, the PHA should ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

HACP Policy:

Post-purchase counseling may generally be triggered by a participant's violation of their homeownership obligations or evidence of the participant's failure to perform program expectations. The HACP may require the family to attend post-purchase counseling one year after the close of escrow and at any time during the term of the homeownership assistance. Counseling topics may include:

- Financial Planning
- Housing Keeping
- Property Maintenance
- Budgeting

Families will not be required to participate in ongoing counseling after commencement of homeownership assistance.

15-VII.G. HOME INSPECTIONS, CONTRACT OF SALE, AND PHA DISAPPROVAL OF SELLER [24 CFR 982.631]

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Home Inspections

The PHA may not commence monthly homeownership assistance payments for a family until the PHA has inspected the unit and has determined that the unit passes HQS-NSPIRE standards.

HACP Policy:

When the family locates a home they wish to purchase and submits a copy of their purchase offer/contract, the HACP will conduct a housing quality standards NSPIRE inspection within 10 business days. Any items found not to meet NSPIRE standards must be repaired before the unit can be determined eligible for the homeownership program.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

The PHA may not require the family to use an independent inspector selected by the PHA. The independent inspector may not be a PHA employee or contractor, or other person under control of the PHA. However, the PHA may establish standards for qualification of inspectors selected by families under the homeownership option.

HACP Policy:

The family must hire an independent professional inspector, whose report must be submitted to the PHA for review. This inspector must be a member of the American Society of Home Inspectors (ASHI) or other recognized professional society, or a licensed engineer. The inspector cannot be a PHA employee or contractor.

The PHA may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with HQSNSPIRE standards.

HACP Policy:

The PHA will review the professional report in a timely fashion and, based on the presence of major physical problems, may disapprove the purchase of the home.

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If the PHA disapproves the purchase of a home, the family will be notified in writing of the reasons for the disapproval.

While the family is receiving homeownership assistance, the PHA will **not** conduct an inspection every other year.

Contract of Sale

Before commencement of monthly homeownership assistance payments, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the PHA a copy of the contract of sale. The contract of sale must:

- Specify the price and other terms of sale by the seller to the purchaser,
- Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser,
- Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser,
- Provide that the purchaser is not obligated to pay for any necessary repairs; and
- Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under CFR part 24.

Disapproval of a Seller

In its administrative discretion, the PHA may deny approval of a seller for the same reasons a PHA may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

15-VII.H. FINANCING [24 CFR 982.632]

The PHA may establish requirements for financing purchase of a home under the homeownership option. This may include requirements concerning qualification of lenders, terms of financing, restrictions concerning debt secured by the home, lender qualifications, loan terms, and affordability of the debt. The PHA must establish policies describing these requirements in the administrative plan.

A PHA may not require that families acquire financing from one or more specified

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lenders, thereby restricting the family's ability to secure favorable financing terms.

HACP Policy:

As a check against predatory lending, the HACP will review the financing of each purchase transaction, including estimated closing costs. The HACP will review the loans for features, such as balloon payments, adjustable rate mortgages, and unusually high interest rates, all of which are prohibited. The PHA also will not approve "seller financing" or "owner-held" mortgages. Beyond these basic criteria, the HACP will rely on the lenders to determine that the loan will be affordable to program participants.

The mortgage the family applies for must require a minimum down payment of at least three percent of the sales price with one percent of the down payment coming from the purchaser's personal funds. The HACP will not require that the family have any more than the minimum of one percent of their own money in the transaction. However, in cases where a lender is requiring a larger amount, the family may be held to the underwriting guidelines set by their lending institution.

The family must execute documentation giving the HACP or its designee, the first right of refusal in the event the family decided to sell the home. This document will be in effect during the term of the HAP. The HACP will require the family to include the HACP as additional insured on the homeowner's insurance policy.

Financing Requirements:

The family is responsible for securing financing. HACP has established financing requirements, listed below, and may disapprove proposed financing if the Authority determines that the debt is unaffordable. HACP may prohibit the following forms of financing:

- a. Balloon payment mortgages
- b. Variable interest rate loans
- c. Seller financing on a case-by-case basis
- d. All mortgage payment costs cannot exceed 50% monthly gross income.
- e. Loans including persons other than those listed in the assisted family household for Homeownership program participation.
- f. Other types of loans that come to the attention of HACP that demonstrate a high- risk factor - to be decided on a case-by-case basis.

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Underwriting Guidelines:

If the mortgage is not FHA-insured, the Authority will require the lender to comply with generally accepted mortgage underwriting standards consistent with those of HUD/FHA, Ginnie Mae, Fannie Mae, Freddie Mac, California Housing Finance Agency (CalHFA), USDA Rural Housing Services, The Federal Home Loan Bank or other private lending institutions.

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Down Payment:

The family is expected to comply with secondary mortgage market underwriting down payment requirements. HACP requires the family to contribute at least one percent (1%) of the purchase price towards the down payment. This amount must come from the family's personal resources and not from gifts, grants, retirement accounts or down payment assistance. HACP may grant relief from this requirement in those cases where a contribution of personal resources would result in extreme hardship for the family.

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15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]

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Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the PHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the PHA the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

1. Ongoing counseling:

To the extent required by the HACP, the family must attend and complete ongoing homeownership and housing counseling.

2. Compliance with mortgage: The family must comply with the terms of any mortgage securing debt incurred to purchase the home (or any refinancing of such debt).

3. Prohibition against conveyance or transfer of home:

___ a. So long as the family is receiving homeownership assistance, use and occupancy of the home is subject to 982.551(h) and (i).

___ b. The family may grant a mortgage on the home for debt incurred to finance purchase of the home or any refinancing of such debt.

___ c. Upon death of a family member who holds, in whole or in part, title to the home or ownership of cooperative membership shares for the home, homeownership assistance may continue pending settlement of the decedent's estate, notwithstanding transfer of title by operation of law to the decedent's executor or legal representative, so long as the home is solely occupied by remaining family members in accordance with 24 CFR 982.551(h).

4. Supplying required information:

The family must supply required information to the HACP in accordance with 982.551(b). In addition to other required information, the family must supply any information as required by the HACP or HUD concerning any mortgage or other debt incurred to purchase the home, and any refinancing of such debt (including information needed to determine whether the family has defaulted on the debt, and the nature of any such default), information on any satisfaction or payment of the mortgage debt; information on any sale or other transfer of any interest in the home and information on the family's homeownership expenses.

5. Notice of move-out: The family must notify the HACP before the family moves out of the home.

6. Notice of mortgage default: The family must notify the HACP if the family defaults on a mortgage securing any debt incurred to purchase the home.

7. The family must provide the PHA with information on any satisfaction or payment of the mortgage debt.

8. Prohibition on ownership interest on second residence: During the time the family receives homeownership assistance, no family member may have any ownership interest in any other residential property.

9. Other family obligations: The family must comply with the obligations of a participant family described in 982.551. However, the following provisions do not apply to assistance under the homeownership option; 982.551(c), (d), (e), (f), (g) and (j)

HACP Policy:

Any inspection the PHA conducts after the initial inspection will be done on an advisory basis. The family will be encouraged to make the repairs, but will not be required to do so as a condition of

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ongoing assistance.

Before commencement of homeownership assistance, the family must execute the HACP Statement of Family Obligations which details the additional HACP HCV Homeownership Program obligations. In the statement, the family agrees to comply with the additional HACP requirements under the homeownership option.

The family must comply with the following additional obligations.

Continuous Employment Obligations

- The applicant head of household, co-head or spouse must remain continuously employed (no less than 30 hours per week) while participating in the program.
- Part-time employment by both parties, totaling over 30 hours per week, does not constitute ~~fulltime~~full-time employment by either party.

For continued eligibility purposes, continuous employment is defined as full time employment (average of 30 hours per week) with no gap in employment lasting more than four weeks total (30 hours x 48 weeks = 1,440 hours).

The employment requirement is not applicable to elderly families or those who's head or co-head of household, spouse or sole member experience permanent disability.

Mitigating Circumstances:

If a working family is subsequently determined by HACP to now qualify as a "disabled family," as defined by HUD, the full-time employment requirement is no longer applicable to that family.

HACP will consider mitigating circumstances where certain lapses in employment prohibit the family from meeting its continuous employment obligation. These include receipt of Unemployment Insurance Benefits due to layoff; absences defined under the Family Medical Leave Act; receipt of Workman's Compensation benefits.

HACP will allow week-for-week substitutions whenever any of these benefits are received.

The participant must return to full-time employment within 30 days after exhaustion of unemployment benefits. Failure to return to full-time employment (30 hours per week) within 30 days will generate a 30-day

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Notice to Correct. Failure to correct will result in a correctable 30-day Notice of Termination.

A participant who is employed but is on leave from work due to maternity leave, FMLA or is receiving Workman's Compensation, is exempt from the full-time employment requirement during the period of approved leave from work. A participant must return to full-time employment within 30 days after exhaustion of applicable benefits. Willful failure to return to full-time employment (30 hours per week), after 30 days, will generate a 30-day Notice to Correct. Failure to correct will result in a correctable 30-day Notice of Termination.

Consideration of other mitigating circumstances is at the discretion of a local Area Coordinator recommendation to the HCV Program Administrator. The Program Administrator will review any additional mitigating circumstances that prevent a participant's return to full-time employment within the time frames allotted. Determinations of the review are made on a case-by-case basis. The decisions are subject to final approval by the Housing Manager.

Prohibition Against Conveyance or Transfer of The Home

So long as the family is receiving homeownership assistance, they may not sell, convey or transfer any interest in the home to any entity or person other than a member of the assisted family residing in the home. If the family chooses to sell the home to another family member, they must inform HACP of their intent prior to the sale and receive written consent from HACP before commencing with any sale, refinance or transfer of interest. The family is required to provide HACP with applicable documentation related to any sale, refinance, or transfer.

Upon the death of a family member who holds, in whole or in part, title to the home or ownership of cooperative membership shares for the home, homeownership assistance may continue pending settlement of the decedent's estate, notwithstanding transfer of the title by operation of the law to the decedent's executor or legal representative, so long as the home is solely occupied by remaining family members. The family is required to inform the HACP of the decedent's death within fourteen (14) days if its occurrence.

Annual Recertification

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The family must complete Annual Reexaminations in accordance with Chapter 11 Part 1, of this Administrative Policy (Chapter 11 Part 1, Annual Reexaminations [24 CFR 982.516])

During each annual re-certification, the family is required to document that it is current on mortgage, insurance and utility payments.

Notice of Move-Out and Mortgage Default

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The family must notify HACP of its intent to move out of the home by supplying HACP with an advanced written thirty-day notice. The family will notify HACP in advance if any family member who owns, in whole or in part, any ownership interest in the home moves out.

Changes in Family Income or Household Composition

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The Family must inform HACP of any changes in the sources and amounts of family income and notify HACP of any changes in the family composition in accordance with Chapter 11, Part II of this Administrative Policy (Chapter 11 Part 2, Interim Reexaminations [24 CFR 982.516])

Refinancing

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The family must obtain written approval from the HACP before securing any refinance or equity loan.

During the time the family receives homeownership assistance, no family member may have any ownership interest in any other residential property.

Other Continued Family Obligations

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The family must;

1. Sign a release allowing HACP, counselors, realtors, and participating lenders to exchange information on the borrower.
2. Agree to maintain the condition of the home to comply with minimum HUD Housing Quality Standards (~~HQS~~NSPIRE).
3. Acknowledge that the termination of assistance shall be in accordance with program requirements and the Administrative Plan.

4. Acknowledge that the family is obligated for the whole mortgage payment in the event of termination of assistance.
5. Not sublease or assign the property.
6. Refinancing a mortgage to cash out equity that will be used to purchase a second home is prohibited for participants of the Homeownership Program

15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]

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The time limits below apply to all family members having an ownership interest in the unit during the time that homeownership payments are made; and, the spouse of any member of the household who has an ownership interest in the unit during the time that homeownership payment are made. All families, including families that become elderly during the term of the homeownership assistance are subject to the following maximum terms:

- ***Fifteen years***, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
- ***Ten years***, in all other cases.

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The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

***The maximum term of assistance does not apply to elderly or disabled families.**

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In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum

term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance). If the family has received such assistance for different homes, or from different HACPs, the total of such assistance terms is subject to the maximum term described in this part.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are being made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in this part.

15-VII.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635]

The monthly homeownership assistance payment is the lower of:

- the voucher payment standard minus the total tenant payment, or the monthly homeownership expenses minus the total tenant payment.

In determining the amount of the homeownership assistance payment, the PHA will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described elsewhere in this plan for the Housing Choice Voucher program. The payment standard for a family is the greater of (i) The payment standard as determined at the commencement of homeownership assistance for occupancy of the home, or (ii) The payment standard at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home.

The PHA may pay the homeownership assistance payments directly to the

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family, or at the PHA's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family. However, a PHA may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

The PHA must adopt policies for determining the amount of homeownership expenses to be allowed by the PHA in accordance with HUD requirements.

Homeownership expenses (not including cooperatives) only include amounts allowed by the PHA to cover:

- Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home,
- Real estate taxes and public assessments on the home,
- Home insurance,
- The PHA allowance for maintenance expenses,
- The PHA allowance for costs of major repairs and replacements,
- The PHA utility allowance for the home,
- Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person,
- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 CFR 982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association.

Homeownership expenses for a cooperative member may only include amounts allowed by the PHA to cover:

- The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home,
- Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt,

- Home insurance,
- The PHA allowance for maintenance expenses,
- The PHA allowance for costs of major repairs and replacements,
- The PHA utility allowance for the home; and
- Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.
- Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

HACP Policy:

The PHA will use the following amounts for homeownership expenses:

- **Monthly homeownership payment.** This includes principal and interest on initial mortgage debt, taxes and insurance, public assessments, and any mortgage insurance premium, if applicable.
- **Utility allowance.** The PHA's utility allowance for the unit, based on the current HCV utility allowance schedule.
- **Monthly maintenance/major repair/replacement allowance.** A single monthly maintenance/repair/replacement allowance will be provided at \$120 per month.
- **Monthly co-op/condominium assessments.** If applicable, the monthly amount of co-op or condominium association operation and maintenance assessments.
- **Monthly principal and interest on debt for improvements.** Principal and interest for major home repair, replacements, or improvements, if applicable.
- **Land lease payments.** Land lease payments where a family does not own fee title to the real property on which the home is located.

The PHA may pay the homeownership assistance payments directly to the family, or at the PHA's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

HACP Policy:

- The HACP's housing assistance payment may be paid directly to the

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family. It will be the family's responsibility to make the entire payment to the lender. The HACP may make an exception if the family requests the payment to go directly to the lender, and this arrangement is acceptable to the mortgage company. If the assistance payment exceeds the amount due to the lender, the HACP must pay the excess directly to the family.

15-VII.L. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]

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Subject to the restrictions on portability included in HUD regulations and PHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program or bill the initial PHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

HACP Policy:

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Families issued a homeownership voucher may exercise portability to purchase a unit in another jurisdiction provided the receiving jurisdiction operates a similar homeownership program for which the applicant qualifies and for which the receiving PHA is accepting new homeownership families.

1. Incoming portable families

- a) May purchase a unit within the jurisdiction of the HACP provided the HACP is accepting new homeownership families at the time of the purchase.
- b) Must be under rental assistance in the City of Pittsburgh for 12 months prior to application for HCV Homeownership.
- c) Must meet the education, counseling, and all other Home Ownership Program requirements of the HACP.
- d) Must be certified by the initial HACP that the family is in good standing with that PHA and Landlord.

The HACP must promptly notify the initial PHA if the Family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the Initiating HACP.

2. **Outgoing portable families**

- a) May purchase a unit within the receiving jurisdiction, provided they are accepting new homeownership families at the time of the purchase.
- b) Must meet the education, counseling, and all other HOME OWNERSHIP PROGRAM requirements of the receiving HACP.
- c) Must be certified by HACP that the family is in good standing with the Initiating HACP and Landlord.
- d) The HACP must promptly notify the PHA, if the Family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the HA.

15-VII.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. The PHA must determine that all initial requirements have been satisfied if a family that has received homeownership assistance wants to move with continued homeownership assistance. However, the following do not apply:

- The requirement that a family must be a first-time homeowner is not applicable.
- The requirement for pre-assistance counseling is not applicable. However, the PHA may require that the family complete additional counseling (before or after moving to a new unit with continued homeownership assistance).

Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home. However, when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the move is needed to protect the health or safety of the family or family member (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 request to move), such family or family member may be assisted with continued tenant-based assistance

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even if they own any title or other interest in the prior home.

The PHA may deny permission to move to a new unit with continued voucher assistance:

- If the PHA has insufficient funding to provide continued assistance.
- In accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- In accordance with the PHA's policy regarding number of moves within a 12-month period.

The PHA must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

HACP Policy:

A family receiving HACP homeownership assistance may purchase and move to a new unit with continued Voucher assistance.

1. Purchase of a new unit

A family receiving homeownership assistance may purchase and move to a new unit with continued assistance, provided that the family fulfills all requirements of the Home Ownership Program at the time of the purchase of the new unit.

The following applies to a family purchasing a new unit under the Home Ownership Program.

The family may not be eligible to move with continued assistance for a period of five (5) years after the initial purchase.

The HACP may, at its discretion, require the family to complete a new housing counseling program or receive additional counseling prior to close of escrow.

The requirement that the family must be a first-time homebuyer is not applicable.

The HACP may deny permission to move with continued assistance in the case of lack of funding or if the HACP has denied or terminated assistance

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to the family under section 8 below.

2. Sale of original Home Ownership Program unit and return to tenant- based rental assistance

The HACP may, at its discretion, allow a family to return to tenant- based rental assistance. The following applies to a family returning to tenant-based assistance:

The HACP may deny permission to move with continued assistance in the case of lack of funding or if the HACP has denied or terminated assistance to the family.

The HACP will not commence continued tenant-based assistance for occupancy of a rental unit so long as any family member owns any title or other interest in the home previously assisted through the Home Ownership Program. In addition, eighteen **(18)** months must have passed since the family's receipt of homeownership assistance.

15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]

At any time, the PHA may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 CFR 982.552 (Grounds for denial or termination of assistance) or 24 CFR 982.553 (Crime by family members).

The PHA may also deny or terminate assistance for violation of participant obligations described in 24 CFR Parts 982.551 or 982.633 and in accordance with its own policy, with the exception of failure to meet obligations under the Family Self-Sufficiency program as prohibited under the alternative requirements set forth in FR Notice 12/29/14.

The PHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt.

Homeownership assistance for a family automatically terminates 180 calendar days after the last homeownership assistance payment on behalf of the family.

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However, a PHA may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

HACP Policy:

In order for the HACP to consider granting relief from the requirement to automatically terminate homeownership assistance 180 days following the HACP's last housing assistance payment on behalf of the family, the family must submit a written request to the HACP at least 30 days prior to the date of automatic termination. The request must include an explanation of the circumstances that will cause an extreme hardship for the family (e.g., the imminent loss of income or employment) as well as documentation supporting the request. The HACP will determine on a case-by-case basis whether to grant relief from the requirement and for what period of time. In no case will the HACP postpone termination beyond an additional 90 days.

HACP Policy:

The HACP may deny or terminate homeownership assistance for the family in accordance with the requirements of this section.

- Failure to report all household income
- Failure to comply with the City of Pittsburgh's HCV Homeownership Program requirements
- Failure to comply with any HUD Family Obligations
- The family defaults on the mortgage.

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15-VII.O. RECAPTURE

HACP Policy:

By regulation, HACP cannot recapture any of the HCV Homeownership assistance, unless there is an act of fraud or misrepresentation of a material fact. The HCV Homeownership recapture provision does not apply to any other program funds that may be used in the transaction. The HACP will not recapture any Homeownership Voucher payments unless there was an act of fraud or misrepresentation of material facts in order to obtain a benefit.

The HACP shall have the discretion to waive or modify any provision of the HCV Home Ownership Program Policy not governed by statute or regulation for good cause or to comply with changes in HUD regulations or directives.

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15-VII. P SWITCHING FROM HOA TO RENTAL ASSISTANCE:

The HACP may allow a family to switch from the homeownership assistance program to the Section 8 Housing Choice Voucher Rental Assistance Program.

The family must meet the following criteria for determination of transfer:

- a. The family has not defaulted on a loan with the homeownership assistance program.
- b. The family has met all of its obligations while participating in the homeownership assistance program.
- c. The family vacates the home and conveys the title to the appropriate designee or representative. The family must sign a Conveyance Acknowledgement Notice, indicating the requirement to completely transfer and convey the property, and failure to do so will result in termination of their rental assistance if such assistance has commenced.

If the family is approved for transfer from the homeownership assistance program to rental assistance, HACP will issue the family a rental voucher, and the family will complete the normal voucher home search process. During the period in which the family is searching for a rental unit, and, if no mortgage default has occurred, HACP will continue to provide the family with homeownership assistance.

If the family fails to transfer or convey the property, HACP will not provide the family with rental assistance. If a rental assistance lease has commenced, HACP will terminate the family's Section 8 Voucher and rental assistance payments.

A family member who owns an interest in the home cannot split and receive both homeownership assistance and rental assistance concurrently. Other family members must apply to the Section 8 wait list.

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Chapter 16

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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 the PHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to the PHA. This part describes policies for recovery of monies that the PHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the PHA 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 the PHA will follow.

Part VII: Reporting and Record Keeping for Children with Elevated Blood Lead Level. This part describes the PHA's responsibilities for reporting, data collection, and record keeping relative to children with elevated 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 the PHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, ~~and stalking, and human trafficking~~; and maintaining the confidentiality of information obtained from victims.
~~obtained from victims.~~

PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

The PHA will maintain administrative fee reserves, or unrestricted net position (UNP) for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. HUD appropriations acts beginning with FFY 2004 have specified that administrative fee funding may be used only for activities related to the provision of HCV assistance, including related development activities. Notice PIH 2012-9 cites two examples of related development activities: unit modification for accessibility purposes and development of project-based voucher units. The notice makes clear that other activities may also qualify as related development activities. Administrative fees that remain in the UNP account from funding provided prior to 2004 may be used for "other housing purposes permitted by state and local law," in accordance with 24 CFR 982.155(b)(1).

If a PHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNP Account and may direct the PHA to use funds in that account to improve administration of the program, for HCV HAP expenses, or to reimburse ineligible expenses in accordance with the regulation at 24 CFR 982.155(b)(3).

HUD requires the PHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the UNP account without specific approval.

HACP Policy:

Expenditures from the UNP account will be made in accordance with all

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applicable federal requirements. Expenditures will not exceed \$75,000 per occurrence without the prior approval of the HACP's Board of Commissioners.

PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

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16-II.A. OVERVIEW

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow the PHA to adapt the program to local conditions. This part discusses how the PHA 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).

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HACP Policy:

Copies of the payment standard and utility allowance schedules are available for review on the City Website and in the HACP's offices during normal business hours.

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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 HACP 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.

Establishing and updating the HACP passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6 (see Section 6-I.G.).

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16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]

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The payment standard sets the maximum subsidy payment a family can receive from the PHA 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.

The PHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the PHA 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, the PHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

Updating Payment Standards

When HUD updates its FMRs, the PHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the PHA to make further adjustments if it determines that rent burdens for assisted families in the PHA's jurisdiction are unacceptably high 24 CFR 982.503(g)].

HACP Policy:

The HACP will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. In addition to ensuring the payment standards are always within the "basic range" the HACP will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

- **Funding Availability:** The HACP will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. The HACP will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.
- **Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40

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percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, the HACP will consider increasing the payment standard. In evaluating rent burdens, the HACP will not include families renting a larger unit than their family unit size.

- **Quality of Units Selected:** The HACP will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.
- **Changes in Rent to Owner:** The HACP 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 HACP will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.
- **Lease-up Time and Success Rate:** The HACP will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Changes to payment standard amounts may be effective on **October 1st** of every year or ***within three months*** of the FMR effective date, ***whichever is earlier***. In no event will Payment Standards be effective less than 90 days/3 months from the HUD published effective date of the FMR. The effective date is applicable both to HUD-required revisions and to discretionary revisions. For all other transaction, the pre-adjusted higher payment standard will remain in place as long as the effective date is applicable both to HUD-required revisions and to discretionary revisions. For all other transaction, the pre-adjusted higher payment standard will remain in place as long as the family continues to reside in the same unit they were living in when the FMR was reduced.

If the HACP has already processed reexaminations that will be effective on or after October 1st, and the effective date of the payment standards is October 1st, the HACP will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by the HACP at the time the reexamination was originally processed.

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Exception Payment Standards [982.503(c)]

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The PHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Exception Payment Standards [24 CFR 982.503(c)(5), Notice PIH 2018-01, FR Notice 9/27/21]

A non-SAFMR PHA may establish an exception payment standard for a zip code area of up to and including 110 percent of the SAFMR determined by HUD for that zip code area. Regardless of the level of the exception payment standard compared to the metropolitan area FMRs (MAFMRs), the PHA must send an email to SAFMRs@hud.gov to notify HUD that it has adopted an exception payment standard based on the SAFMR. A PHA that adopts an exception payment standard pursuant to this authority must apply it to the entire ZIP code area, for both its HCV, and if applicable, its PBV program. For the PBV program, this means that the rent to owner may not exceed the new exception payment standard amount, provided the rent is still reasonable. A PHA that adopts an exception payment standard area must revise its briefing materials to make families aware of the exception payment standard and the area that it covers. In addition, HUD allows PHAs to establish a HUD-Veterans Affairs Supportive Housing (HUD-VASH) exception payment standard. PHAs may go up to but no higher than 120 percent of the FMR or SAFMR specifically for VASH families. PHAs who want to establish a VASH exception payment standard over 120 percent must still request a waiver from HUD (See Section 19-III.E.).

Voluntary Use of Small Area FMRs [24 CFR 982.503, Notice PIH 2018-01]

PHAs that administer vouchers in a metropolitan area where the adoption of SAFMRs is not required may request approval from HUD to voluntarily adopt SAFMRs. SAFMRs may be voluntarily adopted for one or more zip code areas.

HACP Policy:

The HACP will not voluntarily adopt the use of SAFMRs except to establish exception payment standards in certain zip code areas.

Unit-by-Unit Exceptions [24 CFR 982.503(b), 24 CFR 982.505(d), Notice PIH 2010-26]

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Unit-by-unit exceptions to the PHA'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 the PHA's payment standard schedule.

When needed as a reasonable accommodation, the PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [24 CFR 982.503(b)]. The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

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HACP Policy:

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, the HACP must determine that:

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- There is a shortage of affordable units that would be appropriate for the family,
- The family's ~~TTP~~share would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]

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If a substantial percentage of families have difficulty finding a suitable unit, the PHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the PHA to set its payment standards at 90-110 percent of a higher FMR (the 50th, rather than the 40th percentile FMR). To support the request, the PHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants,

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- The PHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The PHA 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, the PHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the PHA's jurisdiction within the FMR area.

Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)]

The PHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

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16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. The PHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

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The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to the PHA about establishing utility allowance schedules.

Air Conditioning

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

HACP Policy:

The HACP has now included an allowance for air-conditioning in its schedule. Central air conditioning or a portable air conditioner must be present in a unit before HACP will apply this allowance to a family's rent and subsidy calculations.

Reasonable Accommodation and Individual Relief

~~HCV program regulations require a~~ Upon request from a family that includes a person with disabilities, the PHA ~~to~~ must approve a utility allowance amount which is higher than ~~shown the applicable amount~~ on the PHA's utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation for a family member with a disability. ~~For example, if to make the program accessible and usable by the~~ family member with a disability requires such an accommodation, the PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed [24 CFR 982.517(e)]. (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

~~Further, the PHA may grant requests for relief from charges in excess of the utility allowance on reasonable grounds, such as special needs of the elderly, ill, or residents with disabilities, or special factors not within control of the resident, as the PHA deems appropriate. The family must request the higher allowance and provide the PHA with an explanation of the need for the individual relief and information about the amount of additional allowance required [see HCV GB, p. 18-8].~~

~~PHAs should develop criteria for granting individual relief and to notify residents about the availability of individual relief, and also to notify participants about the availability of individual relief programs (sometimes referred to as "Medical Baseline discounts") offered by the local utility company. Policies for granting exception utility allowances can be found in Section 6-III.D. of this plan.~~

Utility Allowance Revisions

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The PHA must review its schedule of utility allowances each year and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised. [24 CFR 982.517(c)(1)].

The PHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

Changes to utility allowance schedules will be effective 90 days in advance of the approved & adopted new schedules. The UA Schedule will apply to initial & recertification actions as of the effective date of the new schedule. If HACP has already processed reexaminations that will be effective on or after the effective date of the new utility allowance schedules, HACP will make retroactive adjustments to any such reexaminations if the new utility allowance schedule is higher than the one used by HACP at the time the reexamination was originally processed. If the utility allowance is lower than the one used by HACP at the time of the reexamination, an Interim Reexam will be completed to ensure the tenant receives 30-day notice of the increase in tenant rent portion.

New rates may not necessarily be equal to the percent of rate changes, and that the ramifications on lease-up and HAP utilization may be considered when determining the new rates.

PART III: INFORMAL REVIEWS AND HEARINGS

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16-III.A. OVERVIEW

Both applicants and participants have the right to disagree with, and appeal, certain decisions of the PHA that may adversely affect them. PHA decisions that may be appealed by applicants and participants are discussed in this section. The process for applicant appeals of PHA decisions is called the “informal review.” For participants (or applicants denied admission because of citizenship issues), the appeal process is called an “informal hearing.” PHAs are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 CFR 982.54(d)(12) and (13)].

16-III.B. INFORMAL REVIEWS

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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

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requirement" [24 CFR 982.554] and need not be as elaborate as the informal hearing requirements [*Federal Register* 60, no. 127 (3 July 1895): 34690].

Decisions Subject to Informal Review

The PHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the PHA waiting list
 - Denying or withdrawing a voucher
 - Refusing to enter into a HAP contract or approve a lease
 - Refusing to process or provide assistance under portability procedures
- Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:
- Discretionary administrative determinations by the PHA
 - General policy issues or class grievances
 - A determination of the family unit size under the PHA subsidy standards
 - A PHA determination not to approve an extension or suspension of a voucher term.
 - A PHA determination not to grant approval of the tenancy.
 - A PHA determination that the unit is not in compliance with the **HQS/NSPIRE standard**.
 - A PHA determination that the unit ~~is not in accordance with the HQS due to family size or composition~~ **does meet space standards**.

HACP Policy:

The HACP will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes denying listing on the HACP waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

Notice to the Applicant [24 CFR 982.554(a)]

The PHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the PHA 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

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HACP Policy:

A request for an informal review must be made in writing and delivered to the HACP either in person or by first class mail, by the close of the business day, no later than **10 business days** from the date of the HACP's denial of assistance.

The HACP must schedule and send written notice of the informal review within **10 business days** of the family's request.

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Informal Review Procedures [24 CFR 982.554(b)]

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person. The applicant must be provided an opportunity to present written or oral objections to the decision of the PHA.

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Remote Informal Reviews

All PHA policies and processes for remote informal reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations.

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HACP Policy:

HACP has the sole discretion to require that informal reviews be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

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In addition, HACP will conduct an informal review remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have childcare or transportation that would enable them to attend the informal review, or if the applicant believes an in-person informal review would create an undue health risk. HACP will consider other reasonable requests for a remote informal review on a case-by-case basis.

Conducting Remote Informal Reviews

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The PHA must ensure that the applicant has the right to hear and be heard.

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HACP Policy:

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HACP will conduct remote informal reviews via telephone conferencing call-in or via videoconferencing. If the informal review will be conducted via videoconferencing, HACP will ensure that all applicants, applicant representatives, HACP representatives and the person conducting the informal review can adequately access the platform (i.e., hear, be heard, see, and be seen). If any applicant, applicant representative, HACP representative, or person conducting the informal review is unable to effectively utilize the videoconferencing platform, the informal review will be conducted by telephone conferencing call-in.

At least five business days prior to scheduling the remote review, the PHA will provide the family with login information and/or conferencing call-in information and an electronic and/or physical copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the informal review and request the family notify the PHA of any known barriers. The PHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person informal review.

If the informal review is to be conducted remotely, the PHA will require the family to provide any documents directly relevant to the informal review at least 24 hours before the scheduled review through the mail, via email, or text. The PHA will scan and email copies of these documents to the PHA representative the same day.

Documents will be shared electronically whenever possible.

The PHA will follow up the email with a phone call and/or email to the applicant at least one business day prior to the remote informal review to ensure that the applicant received all information and is comfortable accessing the video conferencing or call-in platform.

The PHA will ensure that all electronic information stored or transmitted with respect to the informal review is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

Whether the informal review is to be conducted via videoconferencing or telephone call-in, HACP will provide all parties login information and/or conferencing call-in information

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before the review.

Informal Review Decision [24 CFR 982.554(b)]

The PHA must notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

HACP Policy:

In rendering a decision, the HACP will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice to the family.
- The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence. The HACP will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, the HACP will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, the HACP will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The HACP 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.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will remain in place and the family will be so notified.

16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

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The PHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease.
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures.

Decisions Subject to Informal Hearing

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Circumstances for which the PHA **must give** a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule
- A determination of the family unit size under the PHA's subsidy standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act.
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules.
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

Circumstances for which an informal hearing **is not required** are as follows:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- Establishment of the PHA 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.

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- A PHA determination that a unit selected by the applicant is not in compliance with the HQSNSPIRE standards.
- A PHA determination that the unit is not in accordance with HQSspace standards because of family size.
- A determination by the PHA to exercise or not to exercise any right or remedy against an owner under a HAP contract.

HACP Policy:

The HACP will only offer participants the opportunity for an informal hearing when required to by the regulations.

Informal Hearing Procedures

Notice to the Family [24 CFR 982.555(c)]

When the PHA makes a decision that is subject to informal hearing procedures, the PHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the PHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the PHA'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.

HACP Policy:

In cases where the HACP makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

- The proposed action or decision of the HACP.
- 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 HACP's decision.

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- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.
- A deadline for the family to request the informal hearing.
- To whom the hearing request should be addressed.
- A copy of the HACP's hearing procedures.
- That the family may request a remote informal hearing

If HACP will require that the hearing be conducted remotely, at the time the notice is sent to the family informing them of the right to request an informal hearing, the family will be notified that the informal hearing will be conducted remotely. The family will be informed of the processes involved in a remote informal hearing and that HACP will provide technical assistance, if needed, before the informal hearing.

Remote Informal Hearings [Notice PIH 2020-32]

The PHA's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations:

HACP Policy:

HACP has the sole discretion to require that informal hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, HACP will conduct an informal hearing remotely upon request as a reasonable accommodation for a person with a disability, if a participant does not have childcare or transportation that would enable them to attend the informal hearing, or if the participant believes an in-person hearing would create an undue health risk. HACP will consider other reasonable requests for a remote informal hearing on a case-by-case basis.

Conducting Informal Hearings Remotely

In conducting any informal hearing remotely, HACP shall ensure due process and that all parties are able to have full access to the hearing.

HACP Policy:

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HACP may conduct remote informal hearings via telephone conferencing call-in or via videoconferencing. If the informal hearing will be conducted via videoconferencing, HACP will ensure that all participants, participant representatives, advocates, witnesses, HACP representatives, and the hearing officer can adequately access the platform (i.e., hear, be heard, see, and be seen).

If any participant, representative, advocate, witness, HACP representative, or hearing officer is unable to effectively utilize the videoconferencing platform, the informal hearing will be conducted by telephone conferencing call-in.

Whether the informal hearing is to be conducted via videoconferencing or telephone call-in, HACP will provide all parties login information and/or telephone call-in information before the hearing.

Scheduling an Informal Hearing [24 CFR 982.555(d)]

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

HACP Policy:

A request for an informal hearing must be made in writing and delivered to the HACP either in person or by first class mail, by the close of the business day, no later than **10 business days** from the date of the HACP's decision or notice to terminate assistance.

The HACP must schedule and send written notice of the informal hearing to the family within **10 business days** of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the HACP may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear within 20 minutes of the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the HACP within 24 hours of the scheduled hearing date, excluding weekends and holidays. The HACP will reschedule the hearing only if the family can show good cause for the

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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 the PHA 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 the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at the PHA offices before the hearing, any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

HACP Policy:

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of HACP documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

If the hearing will be conducted remotely, HACP will compile a hearing packet, consisting of all documents HACP intends to produce at the informal hearing. HACP will mail copies of the hearing packet to the family, the family's representatives, if any, and the hearing officer at least three days before the scheduled remote informal hearing. The original hearing packet will be in the possession of HACP representative and retained by HACP. Documents will be shared electronically whenever possible.

Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

Informal Hearing Officer [24 CFR 982.555(e)(4)]

Informal hearings will be conducted by a person or persons approved by the

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PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

HACP Policy:

The HACP has designated the following to serve as hearing officers:

[Retired Attorneys and Other Department Directors in the City or other Executive Staff not involved in the management or operation of the HACP]

Attendance at the Informal Hearing

HACP Policy:

Hearings may be attended by a hearing officer and the following applicable persons:

- A HACP representative(s) and any witnesses for the HACP
- The participant and any witnesses for the participant
- The participant's counsel or other representative
- Any other person approved by the HACP 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 the PHA's hearing procedures [24 CFR 982.555(4)(ii)].

HACP Policy:

The hearing officer is responsible ~~to manage~~for managing 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)]

The PHA 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.

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HACP Policy:

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

- **Oral evidence:** the testimony of witnesses
- **Documentary evidence:** a writing which is relevant to the case, for example, a letter written to the HACP. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.
- **Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a **model**, a chart or other diagram.
- **Real evidence:** A tangible item relating directly to the case.

If the informal hearing is to be conducted remotely, HACP will require the family to provide any documents directly relevant to the informal hearing at least **24 hours before the scheduled hearing**. HACP will scan and email copies of these documents to the hearing officer and HACP representative the same day.

Documents will be shared electronically whenever possible.

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 HACP 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.

Procedures for Rehearing or Further Hearing

HACP Policy:

The hearing officer may ask the family for additional information and/or

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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 HACP will take effect and another hearing will not be granted.

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.

HACP Policy:

In rendering a decision, the hearing officer will consider the following matters:

HACP Notice to the Family: The hearing officer will determine if the reasons for the HACP's decision are factually stated in the Notice.

Discovery: The hearing officer will determine if the HACP and the family were given the opportunity to examine any relevant documents in accordance with HACP Policy:.

HACP Evidence to Support the HACP Decision: The evidence consists of the facts presented. Evidence is not a conclusion, and it is not an argument. The hearing officer will evaluate the facts to determine if they support the HACP'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 HACP policies. If the grounds for termination are not specified in the regulations or in compliance with HACP policies, then the decision of the HACP will be overturned.

The hearing officer will issue a written decision to the family and the HACP 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,

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Name of the HACP representative; and
Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PHA's decision.

Order: The hearing report will include a statement of whether the PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PHA 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 PHA to restore the participant's program status.

Issuance of Decision [24 CFR 982.555(e)(6)]

A copy of the hearing must be furnished promptly to the family.

HACP Policy:

The hearing officer will mail a "Notice of Hearing Decision" to the HACP and to the participant on the same day. This notice will be sent by first-class mail. The participant will be mailed the original "Notice of Hearing Decision" and a copy of the proof of mailing. A copy of the "Notice of Hearing Decision" will be maintained in the HACP's file.

Effect of Final Decision [24 CFR 982.555(f)]

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The PHA is not bound by the decision of the hearing officer for matters in which the PHA 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 PHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the PHA must promptly notify the family of the determination and the reason for the determination.

HACP Policy:

The Housing Manager has the authority to determine that the HACP is not bound by the decision of the hearing officer because the HACP was not required to provide a hearing, the decision exceeded the authority of the hearing officer, the decision conflicted with or contradicted HUD regulations, requirements, or the decision was otherwise contrary to federal, state, or local laws.

In such a case, the HACP will mail a "Notice of Final Decision" to the HACP and the participant on the same day. The "Notice of Final Decision" will be sent by first-class mail. A copy of this notice will be maintained in the HACP's file.

16-III.D. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review. Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA 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 the PHA 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)]

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The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

USCIS Appeal Process [24 CFR 5.514(e)]

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and the proof of mailing.

HACP Policy:

The HACP 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 HACP 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

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verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

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HACP Policy:

The HACP 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.

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Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

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After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision. The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

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The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

Evidence

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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 the PHA 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.

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HACP Policy:

The family will be allowed to copy any documents related to the hearing at ~~a cost of \$.25 per page~~ no charge. The family must request discovery of HACP documents no later than 12:00 p.m. on the business day prior to the hearing.

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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 the HACP, and to confront and cross-examine all witnesses on whose testimony or information the HACP relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to request an interpreter. Upon request, the PHA will provide competent interpretation services, free of charge.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

HACP Policy:

The HACP will not provide a transcript of an audio taped hearing.

Hearing Decision

The PHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

Informal Hearing Procedures for Residents [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision. For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

Retention of Documents [24 CFR 5.514(h)]

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA 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

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- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

PART IV: OWNER OR FAMILY DEBTS TO THE PHA

16-IV.A. OVERVIEW

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54]. This part describes the PHA's policies for recovery of monies owed to the PHA by families or owners.

HACP Policy:

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the HACP holds the owner or participant liable to return any overpayments to the HACP.

The HACP will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When an owner or participant refuses to repay monies owed to the HACP, the HACP will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil lawsuit
- State income tax set-off program

16-IV.B. REPAYMENT POLICY

Owner Debts to the PHA

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HACP Policy:

Any amount due to the HACP by an owner must be repaid by the owner within 30 days of the HACP 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 HACP 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 the HACP may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by the HACP.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the HOUSING AUTHORITY will ban the owner from future participation in the program and pursue other modes of collection.

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Family Debts to the PHA

HACP Policy:

Any amount owed to the HACP by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, the HACP will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will terminate assistance in accordance with the policies in Chapter 12 and pursue other modes of collection.

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Repayment Agreement [24 CFR 792.103]

The term *repayment agreement* refers to a formal written document signed by a tenant or owner and provided to the PHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

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General Repayment Agreement Guidelines for Families

Down Payment Requirement

HACP Policy:

Before executing a repayment agreement with a family, the HACP will generally require a down payment of 10 percent of the total amount owed.

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If the family can provide evidence satisfactory to the HACP that a down payment of 10 percent would impose an undue hardship, the HACP may, in its sole discretion, require a lesser percentage or waive the requirement.

Payment Thresholds

Notice PIH 2018-18 recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2018-18 acknowledges that PHAs have the discretion to establish “thresholds and policies” for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

HACP Policy:

The HACP has established the following thresholds for repayment of debts:

- Amounts between \$3,000 and the federal or state threshold for criminal prosecution must be repaid within 24 months.
- Amounts between \$2,000 and \$2,999 must be repaid within 18 months.
- Amounts between \$1,000 and \$1,999 must be repaid within 12 months.
- Amounts under \$1,000 must be repaid within 6 months.

If a family can provide evidence satisfactory to the HACP that the threshold applicable to the family’s debt would impose an undue hardship, the HACP may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, the HACP will consider all relevant information, including the following:

- The amount owed by the family to the HACP.
- The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family’s control.
- The family’s current and potential income and expenses
- The family’s current family share, as calculated under 24 CFR 982.515
- The family’s history of meeting its financial responsibilities.

Execution of the Agreement

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HACP Policy:

Any repayment agreement between the HOUSUNGHOUSING AUTHORITY and a family must be signed and dated by the HOUSUNGHOUSING AUTHORITY and by the head of household and spouse/cohead (if applicable).

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Due Dates

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HACP Policy:

All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th.

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Late or Missed Payments

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HACP Policy:

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the HACP, the HACP may send the family a delinquency notice giving the family **10 business days** to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the HACP may terminate assistance in accordance with the policies in Chapter 12.

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If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the HACP may terminate assistance in accordance with the policies in Chapter 12.

No Offer of Repayment Agreement

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HACP Policy:

The HACP generally may not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

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Repayment Agreements Involving Improper Payments

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Notice PIH 2010-18 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or

failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act.
- A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner.
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases.
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance.

PART V : SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

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16-V.A. 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 the PHA 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].

16-V.B. SEMAP CERTIFICATION [24 CFR 985.101]

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PHAs must submit the HUD-required SEMAP certification form within 60

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calendar days after the end of its fiscal year. The certification must be approved by PHA board resolution and signed by the PHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

PHAs with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHAs annually if the PHA 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 the PHA’s SEMAP certification, HUD will rate the PHA’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. The PHA 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 the PHA’s certification on the indicator due to the PHA’s failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

16-V.C. SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648]

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator. A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor is not to be rated under SEMAP indicators 1-7.

SEMAP Indicators
Indicator 1: Selection from the waiting list

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Maximum Score: 15

- This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA 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 the PHA's written policies, according to the PHA's quality control sample.

Indicator 2: Rent ~~reasonableness~~Reasonableness

Maximum Score: 20

- This indicator shows whether the PHA 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 the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA's quality control sample.

Indicator 3: Determination of ~~adjusted-income~~Adjusted Income

Maximum Score: 20

- This indicator measures whether the PHA 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 the PHA's quality control sample.

Indicator 4: Utility ~~allowance schedule~~Allowance Schedule

Maximum Score: 5

- This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.
- Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA's certification.

Indicator 5: ~~HQS quality-control inspections~~NSPIRE Quality Control Inspections

Maximum Score: 5

- This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of ~~HQS~~NSPIRE inspections.

- Points are based on whether the required quality control reinspections were completed, according to the PHA's certification.

Indicator 6: ~~HQS enforcement~~NSPIRE Enforcement
Maximum Score: 10

- This indicator shows whether, following each ~~HQS~~ inspection of a unit under contract where the unit fails to meet ~~HQS~~NSPIRE standards, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.
- Points are based on whether the PHA corrects all ~~HQS~~ deficiencies in accordance with required time frames, according to the PHA's certification.

Indicator 7: Expanding ~~housing opportunities~~Housing Opportunities
Maximum Points: 5

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the PHA 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 the PHA'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 the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA's certification.

Indicator 8: FMR ~~limit~~Limit and ~~payment standards~~Payment Standards
Maximum Points: 5 points

- This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA's certification.

Indicator 9: Annual ~~reexaminations~~Reexaminations
Maximum Points: 10

- This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

Indicator 10: Correct ~~tenant rent calculations~~ Tenant Rent Calculations

Maximum Points: 5

- This indicator shows whether the PHA 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~~ 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~~ NSPIRE Inspections

Maximum Points: 10

- This indicator shows whether the PHA inspects each unit under contract at least annually.
- Points are based on the percent of annual ~~HQS~~ inspections of units under contract that are more than 2 months overdue, according to data from PIC.

Indicator 13: Lease-up

Maximum Points: 20 points

- This indicator shows whether the PHA enters HAP contracts for at least 98 percent of the number of the PHA's baseline voucher units in the ACC for the calendar year ending on or before the PHA's fiscal year, or whether the PHA has expended at least 98 percent of its allocated budget authority for the same calendar year. The PHA can receive 15 points if 95 to 97 percent of vouchers are leased or budget authority is utilized.
- Points are based on utilization of vouchers and HAP expenditures as reported in the voucher management system (VMS) for the most recently completed calendar year.

Indicator 14: Family ~~self-sufficiency~~ Self-Sufficiency (FSS) enrollment and escrow account balances

Maximum Points: 10

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether the PHA has enrolled families in the FSS program as required and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.

- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

Success Rate of Voucher Holders

Maximum Points: 5

- Only applies to PHAs that have received approval to establish success rate payment standard amounts and isn't effective until the second full 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 percent of the published FMR set at the 50th 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.

HACP Policy

The HACP will not annually score or evaluate Indicator # 14 (Family Self Sufficiency Program) or the Deconcentration Bonus. The HACP has never been provided an award or grant to participate in the FSS Program. The Bonus indicator requires a jurisdictional area that is more diverse in income levels & size. The HACP jurisdiction is too small and lacks affordability diversity to measure deconcentration.

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PART VI: RECORD KEEPING

16-VI.A. OVERVIEW

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The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16-VI.B. RECORD RETENTION [24 CFR 982.158]

During the term of each assisted lease, and for at least three years thereafter, the PHA must keep:

- A copy of the executed lease,
- The HAP contract; and
- The application from the family.

In addition, the PHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants,
- An application from each ineligible family and notice that the applicant is not eligible,
- HUD-required reports,
- Unit inspection reports,
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting PHA budget and financial statements for the program,
- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

The PHA must 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 [24 CFR 908.101].

The PHA must maintain Enterprise Income Verification (EIV) system Income Reports in the tenant file for the duration of the tenancy but for a period **not to exceed three years** from the EOP date [Notice PIH 2018-18].

Notice PIH 2014-20 requires PHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

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HACP Policy:

The PHA will keep for at least three years records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act, the equal access final rule, or VAWA.

The PHA must keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, and-stalking, and human trafficking under the PHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [see 24 CFR 5.2002(e)(12)].

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If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

16-VI.C. RECORDS MANAGEMENT

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PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

HACP Policy:

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All applicant and participant information will be kept in a secure location and access will be limited to authorized HACP staff.

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

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

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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 the PHA may release the information collected.

Upfront Income Verification (UIV) Records

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PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD-issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

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HACP Policy:

Prior to utilizing HUD's EIV system, the HACP will adopt and implement EIV security procedures required by HUD.

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Criminal Records

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

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The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA 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 the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA 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 the PHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. 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

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PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this

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information in the tenant file. The PHA should destroy the document.

Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, or Human Trafficking

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For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, or stalking, or human trafficking see section 16-IX.E.

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PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

The PHA 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 the PHA is subject to.

16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]

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The PHA must report the name and address of a child identified as having an elevated blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

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HACP Policy:

~~The~~Upon notification by the owner, the HACP will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level: within five business days.

Upon notification by the owner, the HACP will notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days.

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16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]

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At least quarterly, the PHA must attempt to obtain from the public health

department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an elevated blood lead level.

If the PHA obtains names and addresses of elevated blood lead level children from the public health department(s), the PHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the PHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the PHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

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HACP Policy:

The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis.

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Therefore, the HACP is not providing such a report. The public health department(s) has stated they will release information solely at their discretion, the names and/or **a** addresses of children less than 6 years old with an elevated blood lead level to the HACP.

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PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

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16-VIII.A. OVERVIEW

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.354(e)(1) and 982.454]. If a PHA denies a family a portability move based on insufficient funding, the PHA is required to notify the local HUD office within **10 business days** [24 CFR 982.354]. The requirements found in this notice are mandatory. Insufficient funding may also impact the PHA's ability to issue vouchers to families on the waiting list. The PHA will deny a family permission to move on grounds that the PHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the PHA; (b) the PHA can demonstrate that the move will, in fact, result in higher subsidy costs; (c) the PHA can demonstrate that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs; and (d) for portability moves, the receiving PHA is not absorbing the voucher. This policy applies to moves

within the PHA's jurisdiction as well as to moves outside it under portability.

This following part discusses the methodology the PHA will use to determine whether or not the PHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

16-VIII.B. METHODOLOGY

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HACP Policy:

The HACP 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 the HACP'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, the HACP 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 the HACP cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the HACP will be considered to have insufficient funding.

If the HACP does not have sufficient funding for continued assistance, but the family must move from their unit (e.g., the unit failed **HQSNSPIRE**), the family may move to a higher cost unit if the move is within the HACP's jurisdiction. The HACP, however, will not allow the family to move under portability in this situation if the family wishes to move to a higher cost area. For both moves within the HACP's jurisdiction and outside under portability, the HACP will not deny a move due to insufficient funding if the HACP previously approved the move and subsequently experienced a funding shortfall if the family cannot remain in their current unit. The HACP will rescind the voucher in this situation if the family will be allowed to remain in their current unit.

The HACP will create a list of families whose moves have been denied due to insufficient funding. The HACP will keep the family's request open indefinitely, and, when funds become available, the families on this list will take precedence over families on the waiting list. The HACP will use the same procedures for notifying families with open requests to move.

PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

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16-IX.A. OVERVIEW

The Violence against Women Act ~~of 2013~~ (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault ~~and~~, stalking, ~~and human trafficking~~ who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA.

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PHA policies are located primarily in the following sections: 3-I.C, "Family Breakup and Remaining Member of Tenant Family"; 3-III.G, "Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, ~~and Stalking and Human Trafficking~~"; 10-I.A, "Allowable Moves"; 10-I.B, "Restrictions on Moves"; 12-II.E, "Terminations Related to Domestic Violence, Dating Violence, ~~or Sexual Assault, Stalking~~"; ~~or Human Trafficking~~ and 12-II.F, "Termination Notice."

16-IX.B. DEFINITIONS [24 CFR 5.2003, 42 USC 13925]

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As used in VAWA:

- The term *affiliated individual* means, with respect to a person:
 - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
 - Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking

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- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of ~~violence~~ committed by a current or former spouse or intimate partner of the victim, ~~by a person with whom the victim shares a child in common under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior,~~ by a person who is:
 - ~~The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim.~~
 - ~~A person who is~~ cohabitating ~~with~~ or has cohabitated with the victim as a spouse or intimate partner, ~~by a~~
 - ~~A person similarly situated to a spouse of~~ with whom the victim ~~under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other~~ shares a child in common.
- ~~A person who commits acts~~ against an ~~adult or youth~~ or adult victim who is
 - ~~protected from that person's those~~ acts under the domestic or family violence laws of the jurisdiction.
- ~~The term affiliated individual means, with respect to a person:~~
 - ~~A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or~~
 - ~~Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.~~

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- The term economic abuse means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:
 - Restrict a person's access to money, assets, credit, or financial information.
 - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage.
 - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty.
- The term *sexual assault* means:
 - Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent.
- The term *stalking* means:
 - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.
- The term technological abuse means an act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:
 - Internet enabled devices
 - Online spaces and platforms
 - Computers
 - Mobile devices
 - Cameras and imaging programs
 - Apps
 - Location tracking devices
 - Communication technologies
 - Any other emergency technologies
 - _____

16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]

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Notification to Public

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

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HACP Policy:

The HACP will post the following information regarding VAWA in its offices and on its website. It will also make the information readily available to anyone who requests it.

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A copy of the notice of occupancy rights under VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Form HUD-5380, see Exhibit 16-1)

A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 16-2)

A copy of the HACP's emergency transfer plan (Exhibit 16-3)

A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383 (Exhibit 16-4)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or

1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

Contact information for local victim advocacy groups or service providers

Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]

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PHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

HACP Policy:

The HACP will provide all applicants with information about VAWA at the time they request an application for housing assistance, as part of the written briefing packet, and at the time the family is admitted to the program. The HACP will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

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The HACP will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. The HACP will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notices in Exhibits 16-1 and 16-2.

The PHA is not limited to providing VAWA information at the times specified in the above policy. If the PHA decides to provide VAWA information to a participant following an incident of domestic violence, Notice PIH 2017-08 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the PHA make alternative delivery arrangements that will not put the victim at risk.

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HACP Policy:

Whenever the HACP has reason to suspect that providing information about VAWA to a participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, the HACP may decide not to send mail regarding VAWA protections to the victim's unit if the HACP believes the perpetrator may have access to the victim's mail, unless requested by the victim.

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When discussing VAWA with the victim, the HACP will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room.

The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

Notification to Owners and Managers

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While PHAs are no longer required by regulation to notify owners and managers participating in the HCV program of their rights and obligations under VAWA, the PHA may still choose to inform them.

HACP Policy:

The HACP will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the program and at least annually thereafter.

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The VAWA information provided to owners will consist of the notice in Exhibit 16-5 and a copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, and Stalking and Alternate Documentation.

16-IX.D. DOCUMENTATION [24 CFR 5.2007]

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A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, human trafficking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The PHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the PHA's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

- (1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, ~~or~~ Stalking), Human Trafficking which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
- (2) A federal, state, tribal, territorial, or local police report or court record, or an administrative record
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, human trafficking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The PHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under "Conflicting Documentation," nor may it require certification in addition to third-party documentation [~~VAWA final rule~~ FR Notice 11/16/16].

HACP Policy:

Any request for documentation of domestic violence, dating violence, sexual assault ~~or~~, stalking or human trafficking will be in writing, will

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specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

The HACP may, in its discretion, extend the deadline for **10 business days**. In determining whether to extend the deadline, the HACP will consider factors that may contribute to the victim's inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim's need to address health or safety issues. Any extension granted by the HACP will be in writing.

Once the victim provides documentation, the HACP will acknowledge receipt of the documentation within **10 business days**.

Conflicting Documentation [24 CFR 5.2007(e)]

In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the PHA. Individuals have 30 calendar days to return third-party verification to the PHA. If the PHA does not receive third-party documentation, and the PHA will deny or terminate assistance as a result, the PHA must hold separate hearings for the tenants [Notice PIH 2017-08].

The PHA must honor any court orders issued to protect the victim or to address the distribution of property.

HACP Policy:

If presented with conflicting certification documents from members of the same household, the HACP will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made.

When requesting third-party documents, the HACP will provide contact information for local domestic violence and legal aid offices. In such

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cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.

If the HACP does not receive third-party documentation within the required timeframe (and any extensions) the HACP will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, the HACP will hold separate hearings for the applicants or tenants.

Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]

The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

HACP Policy:

If the HACP accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault or stalking, or human trafficking, the HACP will document acceptance of the statement or evidence in the individual's file.

Failure to Provide Documentation [24 CFR 5.2007(c)]

In order to deny relief for protection under VAWA, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the PHA may allow, the PHA may deny relief for protection under VAWA.

16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]

All information provided to the PHA regarding domestic violence, dating violence, sexual assault or stalking, and human trafficking including the fact that an individual is a victim ~~of such violence or stalking~~, must be retained in confidence. This means that the PHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

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HACP Policy:

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the HACP will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

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**EXHIBIT 16-1: SAMPLE NOTICE OF OCCUPANCY RIGHTS UNDER THE
VIOLENCE AGAINST WOMEN ACT, FORM HUD-5380**

[HACP of the City of Pittsburgh]

Notice of Occupancy Rights under the Violence Against Women Act¹

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.² The U.S. Department of Housing and Urban Development (HUD) is the federal agency that oversees that the housing choice voucher program is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under the housing choice voucher program, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Protections for Tenants

If you are receiving assistance under the housing choice voucher program, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under the housing choice voucher program solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

¹ Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

² Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

Removing the Abuser or Perpetrator from the Household

The PHA may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If the PHA chooses to remove the abuser or perpetrator, the PHA may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, the PHA must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA or find alternative housing.

In removing the abuser or perpetrator from the household, the PHA must follow federal, state, and local eviction procedures. In order to divide a lease, the PHA may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, the PHA may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, the PHA may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

- 1. You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
- 2. You expressly request the emergency transfer.** Your housing provider may choose to require that you submit a form or may accept

Housing Authority of the City of Pittsburgh
another written or oral request.

- 3. You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

The PHA will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

The PHA's emergency transfer plan provides further information on emergency transfers, and the PHA must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

The PHA can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from the PHA must be in writing, and the PHA must give you at least 14 business days (Saturdays, Sundays, and federal holidays do not count) from the day you receive the request to provide the documentation. The PHA may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to the PHA as documentation. It is your choice which of the following to submit if the PHA asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- ☐ A complete HUD-approved certification form given to you by the PHA with this notice, that documents an incident of domestic violence,

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dating violence, sexual assault, or stalking. The form will ask for your name, the

date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.

- ☐ A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, “professional”) from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- ☐ Any other statement or evidence that the PHA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, the PHA does not have to provide you with the protections contained in this notice.

If the PHA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), the PHA has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, the PHA does not have to provide you with the protections contained in this notice.

Confidentiality

The PHA must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

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The PHA must not allow any individual administering assistance or other services on behalf of the PHA (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

The PHA must not enter your information into any shared database or disclose your information to any other entity or individual. The PHA, however, may disclose the information provided if:

- ☐ You give written permission to the PHA to release the information on a time limited basis.
- ☐ The PHA needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- ☐ A law requires the PHA or your landlord to release the information.

VAWA does not limit the PHA's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, the PHA cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if the PHA can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1. Would occur within an immediate time frame, and
2. Could result in death or serious bodily harm to other tenants or those who work on the property.

If the PHA can demonstrate the above, the PHA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce

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or eliminate the threat.

Other Laws

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[San Francisco HUD field office]**.

For Additional Information

You may view a copy of HUD's final VAWA rule at:

<https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf> <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>

Additionally, the PHA must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **[insert name of program or rental assistance contact information able to answer questions on VAWA]**.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact **[Insert contact information for relevant local organizations]**.

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact **[Insert contact information for relevant organizations]**

Victims of stalking seeking help may contact **[Insert contact information for relevant organizations]**.

Attachment: Certification form HUD-5382 **[form approved for this program to be included]**

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**EXHIBIT 16-2: CERTIFICATION OF DOMESTIC VIOLENCE, DATING
VIOLENCE, SEXUAL ASSAULT, OR STALKING AND ALTERNATE
DOCUMENTATION,
FORM HUD-5382**

CERTIFICATION OF

U.S. Department of Housing

OMB

Approval No. 2577-0286

DOMESTIC VIOLENCE - Housing and Urban Development

Exp. 06/30/2017

**DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING,
AND ALTERNATE DOCUMENTATION**

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Purpose of Form: The Violence Against Women Act ("VAWA") protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement

Housing Authority of the City of Pittsburgh
agency, court, or administrative agency; or

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(3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

1. Date the written request is received by victim:

2. Name of victim:

3. Your name (if different from

victim's): _____):

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4. Name(s) of other family member(s) listed on the

lease: _____:

5. Residence of victim:

6. Name of the accused perpetrator (if known and can be safely

disclosed): _____):

7. Relationship of the accused perpetrator to the

victim: _____:

8. Date(s) and times(s) of incident(s) (if

known): _____):

10. Location of

incident(s): _____:

In your own words, briefly describe the incident(s):

Housing Authority of the City of Pittsburgh

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____
Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

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**EXHIBIT 16-3: EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC
VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING
(HCV VERSION)**

Attachment: Certification form HUD-5382

[Insert name of covered housing provider]

**Emergency Transfer Plan for Victims of Domestic Violence, Dating
Violence, Sexual Assault, or Stalking
Housing Choice Voucher Program**

Emergency Transfers

The PHA is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),¹ the PHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available

¹ Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

regardless of sex, gender identity, or sexual orientation.¹ The ability of the PHA to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether the PHA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on [a model](#) emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the federal agency that oversees that the **public housing and housing choice voucher (HCV) programs** are in compliance with VAWA.

Eligibility for Emergency Transfers

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A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L, is eligible for an emergency transfer if the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

Emergency Transfer Request Documentation

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To request an emergency transfer, the tenant shall notify the PHA's management office and submit a written request for a transfer to **any PHA office**. The HACP will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there

¹ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

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is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under the PHA's program;
OR

2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

Confidentiality

The PHA will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the PHA written permission to release the information on a time-limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person or persons that committed an act of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence against Women Act for All Tenants for more information about the PHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

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Emergency Transfer Timing and Availability

The PHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The PHA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. The PHA may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

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If the PHA has no safe and available units for which a tenant who needs an emergency transfer is eligible, the PHA will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, the PHA will also assist tenants in

contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Emergency Transfers: Housing Choice Voucher (HCV) Program

Tenant-based assistance: If you are a participant in the tenant-based HCV program and request an emergency transfer as described in this plan, the PHA will assist you to move to a safe unit quickly using your existing voucher assistance. The PHA will make exceptions to program regulations restricting moves as required.

At your request, the PHA will refer you to organizations that may be able to further assist you.

Project-based assistance: If you are assisted under the project-based voucher (PBV) program, you may request an emergency transfer under the following programs for which you are not required to apply:

- Tenant-based voucher, if available
- Project-based assistance in the same project (if a vacant unit is available and you determine that the vacant unit is safe)
- Project-based assistance in another development owned by the PHA

Emergency transfers under VAWA will take priority over waiting list admissions for these types of assistance.

You may also request an emergency transfer under the following programs for which you are required to apply:

- Public housing program
- PBV assistance in another development not owned by the PHA

Emergency transfers will not take priority over waiting list admissions for these programs. At your request, the PHA will refer you to organizations that may be able to further assist you.

Safety and Security of Tenants

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224

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Tenants who have been victims of sexual assault may call the Rape, Abuse, and Incest National Network's National Sexual Assault Hotline at 1-800-656-HOPE, or visit the online hotline at: <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at:

<https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, FORM HUD-5383

EMERGENCY TRANSFER

U.S. Department of Housing

OMB

Approval No. 2577-0286

REQUEST FOR CERTAIN — **VICTIMS Housing** and Urban Development

Exp. 06/30/2017

**VICTIMS OF DOMESTIC
VIOLENCE, DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING**

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Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

The requirements you must meet are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.

(2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

Housing Authority of the City of Pittsburgh

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER

1. Name of victim requesting an emergency transfer:

2. Your name (if different from

victim's) _____)

3. Name(s) of other family member(s) listed on the lease: _____

4. Name(s) of other family member(s) who would transfer with the victim: _____

5. Address of location from which the victim seeks to transfer:

6. Address or phone number for contacting the victim: _____

7. Name of the accused perpetrator (if known and can be safely disclosed): _____

8. Relationship of the accused perpetrator to the victim: _____

9. Date(s), Time(s) and location(s) of incident(s): _____

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11.

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.

12. If voluntarily provided, list any third-party documentation you are providing along with this notice:

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature

Housing Authority of the City of Pittsburgh

Signed on (Date)

EXHIBIT 16-5: MODEL OWNER NOTIFICATION OF RIGHTS AND OBLIGATIONS

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[Insert Name of Housing Provider]

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**NOTIFICATION OF YOUR RIGHTS AND OBLIGATIONS
UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

VAWA provides protections for Section 8 Housing Choice Voucher (HCV) and PBV applicants, tenants, and participants from being denied assistance on the basis or as a direct result of being a victim of domestic violence, dating violence, sexual assault and ~~stalking~~ and human trafficking.

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Purpose

Many of VAWA's protections to victims of domestic violence, dating violence, sexual assault ~~and stalking, and human trafficking~~ involve action by the public housing agency (~~HACPPHA~~), but some situations involve action by owners of assisted housing. The purpose of this notice (herein called "Notice") is to explain your rights and obligations under VAWA, as an owner of housing assisted through **[insert name of housing provider]** HCV program. Each component of this Notice also provides citations to HUD's applicable regulations.

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Denial of Tenancy

Protections for applicants: Owners cannot deny tenancy based on the applicant having been or currently being a victim of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~. However, the applicant must be otherwise eligible for tenancy. (See 24 Code of Federal Regulations (CFR) 982.452(b)(1).)

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Eviction

Protections for HCV participants: Incidents or threats of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~ will not be considered a serious or repeated lease violation by the victim, or good cause to terminate the tenancy of the victim (~~see 24 CFR 5.2005(c)~~). Protection also applies to criminal activity related directly to domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~, conducted by a member of a tenant's household or any guest or other person under the tenant's control, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~ (24 CFR 5.2005(b)(2)).

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Limitations of VAWA protections:

a. Nothing in ~~the VAWA Final Rule~~ limits the authority of an owner, when notified of a court order, to comply with a court order with respect to (24 CFR 5.2005(d)(1)):

1) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~; or

2) The distribution or possession of property among members of a household in a case.

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b. Nothing in ~~the VAWA Final Rule~~ limits an owner from evicting a victim of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~ for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~, as long as the owner does not subject the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)

c. Nothing in ~~the VAWA Final Rule~~ limits an owner from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~) if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to the HCV property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)

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i. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the following standards: An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.)

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ii. Any eviction due to “actual and imminent threat” should be utilized by an owner only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes but must be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).)

Documentation of Domestic Violence, Dating Violence, Sexual Assault, ~~or Stalking, or Human Trafficking~~

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If an applicant or tenant requests VAWA protection based on status as a victim of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~, the owner has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. However, nothing in HUD’s regulation requires a covered housing provider to request this documentation. (See 24 CFR 5.2007(b)(3).)

If the owner chooses to request this documentation, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1):

- a. Form HUD-55383 (Self-Certification Form); or
- b. A document: 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~, ~~or the effects of abuse~~:

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- 2) Signed by the applicant or tenant; and

3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~, that is the ground for protection and remedies under 24 CFR part 5, subpart L, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~ under 24 CFR 5.2003; or

c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

d. At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

The owner must accept any of the above items (a – c). The owner has discretion to accept a statement or other evidence (d).

The owner is prohibited from requiring third-party documentation of the domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~, unless the submitted documentation contains conflicting information.

~~If the owner makes a written request for documentation, the owner may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The owner may extend this time period at its discretion. During the 14 business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.~~

If the owner makes a written request for documentation, the owner may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The owner may extend this time period at its discretion. During the 14 business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.

Once a victim provides documentation of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~, the owner is encouraged to acknowledge receipt of the documentation in a timely manner.

If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation or within the designated extension period, nothing in VAWA ~~Final Rule~~ may be construed to limit the authority of the covered housing provider to:

- Deny admission by the applicant or tenant to the housing or program;
- Deny assistance under the covered housing program to the applicant or tenant;
- Terminate the participation of the tenant in the covered housing program; or
- Evict the tenant, or a lawful occupant that commits a violation of a lease.

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An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~ does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~ at eviction or termination proceedings. ▲

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Owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWAs (See FR Notice 1/4/23.)

Moves

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A victim of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~ may move in violation of their lease if the move is required to protect their safety. If a move results in the termination of the Housing Assistance Payment Contract, the lease is automatically terminated. ▲

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Lease Bifurcation

Owners may choose to bifurcate a lease or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~ against an affiliated individual or other individual. (See 24 CFR 5.2009(a).) If an owner chooses to bifurcate the lease, the owner must comply with the reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation provision in 24 CFR 5.2009(b). VAWA protections, including bifurcation, do not apply to guests or unreported members of a household or anyone else residing in a household who is not a tenant.

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Eviction, removal, termination of occupancy rights, or termination of assistance must be ~~affected~~ in accordance with the procedures prescribed by federal, state, or local law for termination of leases.

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To avoid unnecessary delay in the bifurcation process, HUD recommends that owners seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the owner regains possession of the unit. The owner would then execute a new lease with the victim.

Evictions Due to "Actual and Imminent Threat" or Violations Not Premised on Abuse

The

VAWA ~~Final Rule~~ generally prohibits eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, ~~or stalking, or human trafficking~~, if the

applicant or tenant otherwise qualifies for assistance, participation or occupancy. (See 24 CFR 5.2005.)

However, ~~the VAWA Final Rule~~ does not prohibit an owner from evicting a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking that is in question against the tenant or an affiliated individual of the tenant. ~~Nor does the VAWA Final Rule~~ prohibit an owner from evicting a tenant if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to property of the owner would be present if that tenant or lawful occupant is not evicted or terminated from assistance. ~~-(See 5.2005(d)(2) and (3).)~~

In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the covered housing provider must have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. ~~In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:~~

- The duration of the risk;₁
- The nature and severity of the potential harm;₁
- The likelihood that the potential harm will occur; and
- The length of time before the potential harm would occur.

(See 24 CFR 5.2003 and 5.2005(d)(2).)

Confidentiality

Any information submitted to a covered housing provider under 24 CFR 5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking, must be maintained in strict confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

Employees of the owner (or those within their employ, e.g., contractors) must not have access to the information unless explicitly authorized by the owner for reasons that specifically call for these individuals to have access to this information under applicable ~~Federal, State~~ federal, state, or local law (e.g., the information is needed by an employee to provide the VAWA protections to the victim).

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The owner must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:

- a. Requested or consented to in writing by the individual (victim) in a time-limited release;
- b. Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
- c. Otherwise required by applicable law.

When communicating with the victim, owners must take precautions to ensure compliance with these confidentiality requirements.

Service Providers

[insert name of housing provider] has extensive relationships with local service providers. [insert name of housing provider] staff are available to provide referrals to shelters, counselors, and advocates. These resources are also provided in [insert name of housing provider] Annual and 5-Year Plan, Administrative Plan, VAWA Notice of Occupancy Rights, and Emergency Transfer Plan. A list of local service providers is attached to this Notice.

Definitions

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

- (1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or

- (2) Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or

lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease

requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Dating violence means violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship;
 - (ii) The type of relationship; and
 - (iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of ~~violence~~ committed by a current or former spouse or intimate partner of the victim, ~~by a person with whom the victim shares a child in common under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior,~~ by a person who is:

- ~~The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim~~
- ~~A person who is~~ cohabitating ~~with~~ or has cohabitated with the victim as a spouse or intimate partner, ~~by a~~
- ~~A person similarly situated to a spouse of~~ ~~with whom~~ the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or ~~by any other~~ ~~shares a child in common~~
- ~~A person who commits acts~~ against an ~~adult or youth~~ ~~or adult~~ victim who is protected from ~~that person's~~ ~~those~~ acts under the domestic or family violence laws of the jurisdiction. ~~The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.~~

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Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

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Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

VAWA means the Violence Against Women Act of ~~1894~~1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).

Attached:

Legal services and the domestic violence resources for the Metro area
Form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

[insert name of housing provider] VAWA Notice of Occupancy Rights

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c. Nothing in VAWA limits an owner from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking) if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to the HCV property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)

i. In this context, words, gestures, actions, or other indicators will be considered an "actual and imminent threat" if they meet the following standards: An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.)

ii. Any eviction due to "actual and imminent threat" should be utilized by an owner only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).)

Documentation of Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking

If an applicant or tenant requests VAWA protection based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the owner has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. However, nothing in HUD's regulation requires a covered housing provider to request this documentation. (See 24 CFR 5.2007(b)(3).)

1) If the owner chooses to request this documentation, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1):

Housing Authority of the City of Pittsburgh

a. Form HUD-55383 (Self-Certification Form); or

b. A document: 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, "professional") from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, stalking, or human trafficking, or the effects of abuse;

2) Signed by the applicant or tenant; and

3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, stalking, or human trafficking that is the ground for protection and remedies under 24 CFR part 5, subpart L, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, stalking, or human trafficking under 24 CFR 5.2003; or

c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

d. At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

The owner must accept any of the above items (a – c). The owner has discretion to accept a statement or other evidence (d).

The owner is prohibited from requiring third-party documentation of the domestic violence, dating violence, sexual assault, stalking, or human trafficking, unless the submitted documentation contains conflicting information.

If the owner makes a written request for documentation, the owner may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The owner may extend this time period at its discretion. During the 14 business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.

Once a victim provides documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the owner is encouraged to acknowledge receipt of the documentation in a timely manner.

If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation or within the designated extension period, nothing in VAWA may be construed to limit the authority of the covered housing provider to:

a. Deny admission by the applicant or tenant to the housing or program;

b. Deny assistance under the covered housing program to the applicant or tenant;

c. Terminate the participation of the tenant in the covered housing program; or

d. Evict the tenant, or a lawful occupant that commits a violation of a lease.

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An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, stalking, or human trafficking at eviction or termination proceedings.

Owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWAs (See FR Notice 1/4/23.)

16-IX.F. HOUSING CHOICE VOUCHER PROGRAM TEMPORARY CHANGES TO POLICIES AND PROCEDURES IN RESPONSE TO COVID-19

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HUD has facilitated the adoption of specific waiver authority by PHAs in an effort to ensure operations are not impacted and families can continue to be served during the Shelter in Place Order by the Public Health Director and Emergency Declarations made by the Governor of California and the President of the United States.

Pursuant to **PIH Notice 2020-05** issued on April 10, 2020, HACP has adopted the following waivers and modified its policies and procedures to implement said waivers. These waivers were adopted effective April 14, 2020 and expire as indicated below:

1. PH & HCV - 3: Family Income and Composition; Annual Examination- Income Verification requirements

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HUD is waiving the requirement that PHAs must use the income hierarchy described by PIH Notice 2018-18. HUD will allow PHAs to forgo third-party income verification requirements for annual reexaminations, including the use of EIV, if a PHA opts to conduct annual recertifications rather than delaying them. PHAs may consider self-certification as the highest form of income verification to process annual reexaminations. This may occur over the telephone (but must be documented for the written record by PHA staff), through an email or postal mail with a self-certification form by the tenant, or through other electronic communication. Income and family composition examinations and recertifications do not have to be conducted in-person.

HACP Policy Change:

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HACP will consider written and verbal self-declarations submitted by household adults as primary verification of income and process reexaminations based on

Housing Authority of the City of Pittsburgh

the self-certification. Where available, third-party verification will be accepted to augment or support the self-certification. The HUD Hierarchy and Techniques is suspended and will not be in effect during the HUD declared period.

Expires: July 31, 2020

Extended: December 31, 2021

2. PH & HCV - 4: Family Income and Composition; Interim Examinations

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HUD is waiving the requirements to use the income hierarchy described by PIH Notice 2018-18 and will allow PHAs to forgo third-party income verifications, including EIV. PHAs may consider self-certification as the highest form of income verification for interim reexaminations. Interim reexaminations are not required to be held in-person.

HACP Policy Change: HACP will consider written and verbal self-declarations submitted by household adults as primary verification of income and process reexaminations based on the self-certification. Where available, third-party verification will be accepted to augment or support the self-certification. The HUD Hierarchy and Techniques is suspended and will not be in effect during the HUD declared period.

Expires: July 31, 2020

Extended: December 31, 2021

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3. PH & HCV - 5: Enterprise Income Verification (EIV) Monitoring

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HUD is waiving mandatory EIV monitoring requirements found in PIH Notice 2018-18 through July 31, 2020.

Policy Change:

HACP did not adopt this waiver

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Expires: July 31, 2020

Extended: December 31, 2021

4. PH & HCV - 6: Family Self-Sufficiency (FSS) Contract of Participation; Contract Extension

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16-85

HUD will consider the circumstances surrounding COVID-18 to qualify as “good cause” to extend a family’s contract of participation in the FSS program for no more than 2 years through December 31, 2020.

Policy Change:

HACP did not adopt this waiver

Expires: December 31, 2020

Extended: December 31, 2021

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5. HQS - 1: Initial Inspection Requirements

A PHA may rely on the owner’s certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit instead of conducting an initial inspection. A PHA may add other requirements or conditions to the owner’s certification. The PHA is required to conduct an HQS inspection on the units as soon as reasonably possible, but no later than October 31, 2020. The waiver may also apply to PHA-owned units.

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Policy Change:

HACP did not adopt this waiver HACP shall continue to conduct in-person initial inspections where possible.

Expires: July 31, 2020

Extended: December 31, 2021

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6. HQS - 2: Project-Based Voucher (PBV) Pre-HAP Contract Inspections, PHA Acceptance of Complete Units

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A PHA may rely on the owner’s certification that the owner that has no reasonable basis to have knowledge that life-threatening conditions exist in the unit. A PHA may add other requirements. The PHA must conduct an HQS inspection no later than October 31, 2020 but must do so as soon as reasonably possible. If there’s a requirement under the Agreement to enter into a Housing Assistance Payment (AHAP) contract for newly constructed or rehabilitated projects, the PHA may choose to allow the owner to certify that the PHA

Housing Authority of the City of Pittsburgh
requirement has been met. The waiver may also apply to PHA-owned units, if the independent entity is unable to perform the inspection.

Policy Change:

HACP did not adopt this waiver

Expires: October 31, 2020

Extended: December 31, 2021

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7. HQS - 5: Biennial Inspections

HUD is waiving the requirement that PHAs inspect the unit not less than biennially (certain small, rural PHAs may inspect units triennially). All delayed biennial inspections must be completed as soon as reasonably possible, but no later than October 31, 2020. This waiver may be applied to PHA-owned units if the independent entity is unable to perform the inspection.

HACP Policy Change:

All Annual/Biennial inspections will be postponed until COVID-18 restrictions are lifted. HACP will document all tenant files with a flyer to document this delay. Once restrictions are lifted all delayed HQS inspections will be conducted by October 31, 2020 or alternative date as determined by HUD.

Expires: December 31, 2021

Extended: December 31, 2021

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8. HQS - 6: Interim Inspections

The waiver states that if an HQS reported deficiency is life-threatening, the PHA must notify the owner of the reported life-threatening deficiency and the owner must correct it within 24 hours of the PHA notification or provide documentation that the deficiency does not exist. For non-life-threatening deficiencies, the PHA must notify the owner within 30 days and the owner must either make the repair or document that the deficiency does not exist within 30 days of the PHA notification. The PHA may add other requirements. The PHA is not required to conduct an on-site inspection to verify the repairs have been made, but may rely on alternative verification methods (photos, tenant certification, etc.). This waiver may apply to PHA-owned units where the independent entity is unable to perform the inspection.

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Policy Change:

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HACP did not adopt this waiver.

HACP shall continue to conduct in-person Interim inspections where possible.

Expires: July 31, 2020

Extended: December 31, 2021

9. HQS - 7: PBV Turnover Unit Inspections

The Department is waiving the regulation that requires a PBV unit inspection before the unit is leased to a new family. The PHA may rely on the owner's certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit. The PHA may add other requirements. The waiver may be applied to PHA-owned units if the independent entity is unable to complete inspections.

Policy Change:

HACP did not adopt this waiver. HACP shall continue to conduct in-person initial inspections where possible.

Expires: July 31, 2020

Extended: December 31, 2021

10. HQS - 8: PBV HAP Contract – HQS Inspections to Add or Substitute Units

The Department is waiving the HQS inspection requirement when substituting or adding a new unit to a PBV HAP contract. Instead, the PHA may rely on the owner's certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit. The PHA may add other conditions. The waiver may also be applied to PHA-owned units.

Policy Change:

HACP did not adopt this waiver

Expires: July 31, 2020

Extended: December 31, 2021

11. HQS - 9: HQS Quality Control Inspections

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HUD is waiving its supervisory quality control inspections until October 31, 2020.

HACP Policy: Change:

HACP will not conduct monthly quality control inspections of completed inspections. HACP will resume QC Inspections in November 2020 or alternative date as determined by HUD.

Expires: October 31, 2020

Extended: December 31, 2021

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12. HQS - 10: HQS Space and Security

HUD is waiving the regulation requiring one bedroom for every two people where the PHA wishes to assist a current participant that needs to add a member or members to the assisted household as a result of the COVID-18 emergency. This waiver does not apply to an initial or new lease.

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Policy Change:

HACP did not adopt this waiver

Expires: Extended to 12/31/2021 – remains in effect 1 year from current Lease Term or One Year from the date of the HUD Notice - April 09, 2021, whichever is longer.

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13. HQS - 11: Homeownership Option – Initial HQS Inspection

HUD is waiving the requirement for an initial HQS inspection before commencing monthly homeownership assistance payments. The family is still required to obtain an independent professional inspector and the PHA is still required to review the independent inspection and has discretion to disapprove the unit because of the contents of the inspection report.

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HACP Policy Change:

HACP will continue to review the Home Inspection to ensure compliance to physical standards. However, HQS inspections will not be done by HACP until HUD imposed expiration of this provision.

Expires: July 31, 2020

Extended: December 31, 2021

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14. HCV - 1: Administrative Plan

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HUD is waiving the requirement that a PHA's administrative plan must be formally adopted by a PHA's board. Must be formerly adopted as practicable following June 30, 2020, but no later than July 31, 2020.

HACP Policy Change:

HACP will update the Administrative Plan as needed and required by HUD where permitted without Board of Commissioners approval and will bring all changes implemented to the Board by the HUD determined deadline.

Expires: June 30, 2020 and must be presented to the Board by July 31, 2020.
Expires: 9/30/2021 and policies must be presented to the Board by December 31, 2021.

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15. HCV - 2: Information When Family Is Selected – PHA Oral Briefing

HUD is waiving the requirement that the PHA must give an oral briefing to families in the HCV and PBV programs. The PHA must instead conduct the briefing by other means such as webcast, video call, expanded information packet. The PHA must ensure that the method of communication for the briefing effectively communicates with each family member, including those with vision, hearing, and other communication-related disabilities and those with persons with limited English proficiency.

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HACP Policy Change:

HACP shall conduct briefings for new participants and households moving to other units by telephone or other electronic means and refer them to our website for the briefing packet or mail it to the family to have and follow along with staff during the phone briefing tenant file will be documented with the date and time of the remote briefing and how the briefing packet was provided to them.

Expires: July 31, 2020
Extended: December 31, 2021

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16. HCV - 3: Term of Voucher – Extensions of Term HUD is waiving the requirement the voucher term extensions must be in accordance with the PHA administrative plan.

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HACP Policy Change:

HACP already has a liberal policy of granting voucher extensions especially as a result of its restrictive rental market. HACP is waiving the requirement that the family provide evidence of their housing search in order to be granted an extension of their voucher search period.

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Expires: July 31, 2020

Extended: December 31, 2021

17. HCV - 4: PHA Approval of Assisted Tenancy – When HAP Contract is Executed

HUD is waiving the regulatory requirement that the HAP contract may not be executed 60 days after the lease term begins and will instead allow PHAs to execute the HAP contract after the 60-day deadline has passed and make housing assistance payments retroactive to the beginning of the lease term. However, the PHA and owner must execute the HAP contract no later than 120 days from the beginning of the lease term.

Policy Change:

HACP did not adopt this waiver

Expires: July 31, 2020

Extended: December 31, 2021

18. HCV - 5: Absence From Unit

The Department is waiving the requirement that a voucher family may not be absent from a unit for a period of more than 180 consecutive calendar days. The PHA has discretion whether to continue the HAP contract in this situation and not terminate due to extenuating circumstances (e.g., hospitalization, extended stays at nursing homes, or caring for family members). The period of availability to continue making these HAP payments despite the family's absence ends on December 31, 2020. The PHA may not make payments after this date if the family is absent and the HAP contract will terminate.

Policy Change:

HACP did not adopt this waiver

Expires: December 31, 2020

Extended: December 31, 2021

18. HCV - 6: Automatic Termination of HAP Contract

The Department is waiving the requirement to terminate a HAP contract 180 days after a housing assistance payment is reduced to \$0. This is in recognition 16-91

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that the COVID-18 emergency may cause the temporary addition of household members which causes the calculation of HAP to reach \$0. As an alternative requirement, the PHA, following a written notice to the owner and family, may extend the period of time following the last payment to the owner that triggers the automatic termination.

Policy Change:

HACP did not adopt this waiver

Expires: December 31, 2020

Extended: December 31, 2021

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20. HCV - 7: Increase in Payment Standard under HAP contract term

The Department is waiving the requirement that if a payment standard is increased during the term of a HAP contract, the increased payment standard shall not be effective until the family's first regular reexamination. Instead, the increased payment standard may be effective at any time (e.g., interim reexamination, owner rent increase) after the effective date as long as it is not later than the family's first regular reexamination.

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Policy Change:

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Extended: December 31, 2021

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21. PHAS, SEMAP and Financial Reporting Standards (b): SEMAP (Section Eight Management Assessment Program)

HUD will not issue SEMAP scores that are pending or for fiscal years ending in 2020 unless a PHA requests a SEMAP score. HUD will, instead, carry forward the PHAs most recent SEMAP score on record.

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HACP Policy Change:

HACP will not submit a SEMAP score for FY2020. It will request that HUD carry forward their SEMAP score from 2018 which indicated that HACP was a High Performer for its Housing Choice Voucher Program.

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Expires: March 31, 2021

Extended: December 31, 2021

22. Other Waivers (a): PHA Reporting Requirements on HUD Form 50058

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HUD is waiving the requirement that PHAs must submit form HUD-50058 60 calendar days after any action recorded on line 2b for transactions impacted by implemented waivers and alternative requirements. Through December 31, 2020, PHAs will have 90 days to submit their form HUD-50058 after the effective date of action to HUD. Although the waiver provides up to 90 days to submit form HUD-50058, HUD encourages PHAs that have operational capacity to continue submitting form HUD-50058 within the normal 60-day timeframe. HUD will issue guidance in the near future that will provide PHAs with workarounds to ensure that the delayed submission of form HUD-50058 does not cause any fatal errors in the IMS-PIC system.

Policy Change:

HACP did not adopt this waiver

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Expires: December 31, 2020

Extended: December 31, 2021

23. Repayment Agreements

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Families are required to make repayments on unreported income or non-payment of rent on Repayment Agreements executed between the tenant and /or and HACP. HACP recognizes that COVID-1819 has resulted in many households having their monthly income affected by loss of employment, layoff or reduction in hours worked.

HACP Policy Change:

In the event of hardship, HACP shall suspend a households repayment agreement until July 31, 2020 or alternative deadline for temporary waivers as determined by HUD.

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Chapter 17

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PROJECT-BASED VOUCHERS

INTRODUCTION

This chapter describes HUD regulations and PHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the PHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to **housing qualityNSPIRE** standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the PHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW [24 CFR 983.5]

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

HACP Policy:

The HACP will operate a project-based voucher program using up to 20 percent of its authorized units for project-based assistance.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the HACP is not required to reduce the number of these units if the number of authorized units is subsequently reduced. However, the HACP is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the PHA has vouchers available for project-basing [FR Notice 1/18/17].

Additional Project-Based Units [FR Notice 1/18/17]

The PHA may project-base an additional 10 percent of its units above the 20 percent program limit, if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).
- Are specifically made available to house families that are comprised of or include a veteran.

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- **Veteran means an individual who has served in the United States Armed Forces.**

- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.
 - **For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].**

HACP Policy:

The HACP will not set aside units above the 20 percent program limit.

Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. In order to be excepted, the unit must meet the following conditions:

- The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17; and
- In the five years prior to the date the PHA either issued the RFP or selected the project, the unit either:
 - Received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for Elderly (Section 202), Housing for Persons with Disabilities (section 811), Rent Supplement (Rent Supp), or Rental Assistance Program (RAP); or
 - Was subject to a rent restriction through a loan or insurance program as a result of Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for Elderly Persons (Section 202), or Housing for Persons with Disabilities (Section 811)
 - Received assistance under the Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments of 1978)

For New Construction units, to qualify for the exception as replacement housing, the project must meet all of the following criteria:

- a. The units must have been assisted with one of the forms of assistance listed

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above no more than 5 years from the date of the RFP or selection date of the project under non- competitive selection.

- b. The new construction project is located on the site of the original project.
- c. One of the primary purposes of the new construction project is or was to replace the affordable rental units that previously existed at the site as evidenced by one of the following:
 - i. Former residents are provided with a preference for the right of first occupancy of the replacement units.
 - ii. Prior to demolition, the project was specifically identified as replacement housing for the original project.

The unit size configuration for the new construction units may differ from the original unit size configurations and the number of PBV assisted units may differ from the original project. However, under no circumstance may the program exception limitation be applied to PBV new construction units that exceed the total number of covered units from the original project.

Standard criteria for selection of projects and the units to which project-based assistance can be attached, including consistency with the PHA Plan, the goals of deconcentrating poverty and expanding housing and economic opportunities, site selection, and all civil rights requirements, are still in effect.

Prior to issuance of an RFP or selection under a non-competitive selection process, HACP must notify HUD 14 days in advance of the number of units it will attach PBV assistance to and indicate the specific exception that covers the units. An email must be sent to pbvsubmissions@hud.gov with a copy to the local field office PIH director.

Units that have previously received either PBV or HCV assistance are not covered under the exception.

HACP Policy:

The HACP may not project-base any of the above unit types.

17-I.A.2 OTHER UNITS NOT SUBJECT TO THE PBV PROGRAM UNIT EXCEPTION

In addition to the units listed above, other units are not subject to the program limitation calculation and would be excluded in the total number of authorize units and the total number of PBV units currently committed to PBV that the PHA submits to the field office. The units are as follows:

- a. PBV Units under the RAD Demonstration Program
- b. HUD -VASH Set Aside - The exception only applies to HUD-VASH that were awarded to HACP through the HUD-VASH PBV Set-Aside funding

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process. All other VASH vouchers including and that HACP chooses to
project-base are still subject to the PBV program limitations.

17-I.A.3 INCOME-MIXING PROJECT CAP EXEMPTIONS

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Projects listed in 17-I.A.1 above are further exempted from the cap on the number of units receiving PBV assistance in any project. For these projects, 100% of the units can be assisted with PBV assistance. Provisions of 17-I.A.1.(2) (3) (4) shall be applicable to these projects.

This provision does not apply to units that were receiving PBV assistance prior to the effective date of April 18, 2017 of the HOTMA implementation guidance.

PBV HAP Contracts are considered legally binding obligations by HACP and shall be the last units affected by any HACP efforts to respond to insufficient funding. PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, HACP is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, HACP is responsible for determining the number of units that are available for project-based vouchers and ensuring that the number of units that are assisted with PBV assistance are within the available units under the ACC [24 CFR 983.6]. HACP shall also ensure that the amount of funding for the assistance attached to the units is available under the ACC.

17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

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Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

HACP Policy:

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the HACP policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.

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17-I.C. RELOCATION REQUIREMENTS [24 CFR 983.7]

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Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the

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Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1870 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of the PHA to ensure the owner complies with these requirements.

17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]

The PHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the PHA must comply with the PHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

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PART II: PBV OWNER PROPOSALS

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17-II.A. OVERVIEW

With certain exceptions, the PHA must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57]. The PHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51(b)]

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The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

- PHA request for PBV Proposals. The PHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the PHA request. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- The PHA may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. The PHA need not conduct another competition.

Units Selected Non-Competitively [FR Notice 1/18/17, Notice PIH 2017-21; 24 CFR 983.51(b)]

For certain public housing projects where the PHA has an ownership interest or control, the PHA may attach PBV assistance non-competitively without following one of the two processes above.

This exception applies when the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory within five years of the date on which the PHA entered into the AHAP or HAP.

If the PHA is planning rehabilitation or new construction on the project, a minimum threshold of \$25,000 per unit in hard costs must be expended.

If the PHA plans to replace public housing by attaching PBV assistance to existing housing in which the PHA has an ownership interest or control, then the \$25,000 per unit minimum threshold does not apply as long as the existing housing substantially complies with NSPIRE standards

For certain public housing projects where the PHA has an ownership interest or control and will spend a minimum amount per unit on rehabilitation or construction, the PHA may select a project without following one of the two processes above.

HACP Policy:

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The HACP may attach PBVs to projects owned by the PHA as described above.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]

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Prior to issuing a request for proposals (RFP) for a competitive selection process or prior to selection of a project in a non-competitive selection process, HACP shall submit to the HUD Field Office the following:

1. The total number of units authorized under the ACC including HUD-VASH and Family Unification Program (FUP) vouchers and how many units are excluded from the total PBV commitment to date, if applicable.
2. Total number of units currently committed for PBV under HAP, AHAP or selected and specify the number of units excluded from the baseline PBV units.
3. The number of units to which HACP is proposing to attach PBV assistance through the RFP or selection.

The notice must be submitted to HUD no later than 14 days prior to the issuance of an RFP or selection is made to pbvsubmissions@hud.gov and copied to the field office PIH director.

HACP procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by HACP. 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 HACP's request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA. 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 PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

HACP Policy:

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PHA Request for Proposals for Rehabilitated and Newly Constructed Units

The HACP will advertise its request for proposals (RFP) for rehabilitated

and newly constructed housing in the following newspapers and trade journals.

- **Contra Costa Times – East Bay Edition**

In addition, the HACP will post the RFP and proposal submission and rating and ranking procedures on its electronic web site.

The HACP will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the HACP estimates that it will be able to assist under the funding the HACP is making available. Proposals will be due in the HACP office by close of business 30 calendar days from the date of the last publication.

In order for the proposal to be considered, the owner must submit the proposal to the HACP by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

The HACP will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

- Owner experience and capability to build or rehabilitate housing as identified in the RFP,
- Extent to which the project furthers the HACP goal of deconcentrating poverty and expanding housing and economic opportunities,
- If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- Projects with less than 25 percent of the units assisted will be rated higher than projects with 25 percent of the units assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the HACP will rate partially assisted projects on the percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

PHA Requests for Proposals for Existing Housing Units

The HACP will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals.

- **Contra Costa Times – East Bay Edition**

In addition, the HACP will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site.

The HACP will periodically publish its advertisement in the newspapers

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and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the HACP estimates that it will be able to assist under the funding the HACP is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

- Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program,
- Extent to which the project furthers the HACP goal of deconcentrating poverty and expanding housing and economic opportunities,
- If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- Extent to which units are occupied by families that are eligible to participate in the PBV program.

PHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

The HACP will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits on an ongoing basis.

The HACP may periodically advertise that it is accepting proposals, in the following newspapers and trade journals:

- **Contra Costa Times – East Bay Edition**

In addition to, or in place of advertising, the HACP may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis. The HACP will evaluate each proposal on its merits using the following factors:

- Extent to which the project furthers the HACP goal of deconcentrating poverty and expanding housing and economic opportunities; and
- Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

PHA-Owned Units [24 CFR 983.51(e), 983.59, Notice PIH 2015-05, and FR Notice 1/18/17]

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A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. If the PHA selects a proposal for housing that is owned or controlled by the PHA, the PHA must identify the entity that will review the PHA proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of PHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the PHA and a HUD-approved independent entity. In addition, an independent entity must determine the rent to owner, the redetermined rent to owner, and reasonable rent. Housing qualityNSPIRE standards inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

HACP Policy:

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The HACP may submit a proposal for project-based housing that is owned or controlled by the HACP. If the proposal for HACP-owned housing is selected, the HACP will use Housing Authority of the County of Contra Costa to review the HACP selection and to administer the PBV program. The HACP will obtain HUD approval of Housing Authority of the County of Contra Costa prior to selecting the proposal for HACP-owned housing.

The HACP may only compensate the independent entity from HACP ongoing administrative fee income (including amounts credited to the administrative fee reserve). The HACP may not use other program receipts to compensate the independent entity for its services. The HACP and independent entity may not charge the family any fee for the appraisal, or the services provided by the independent entity.

PHA Notice of Owner Selection [24 CFR 983.51(d)]

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The PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of

general circulation and other means designed and actually operated to provide broad public notice.

HACP Policy:

Within **15 business days** of the HACP making the selection, the HACP will notify the selected owner in writing of the owner's selection for the PBV program. The HACP will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

In addition, the HACP will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers and trade journals the HACP used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The HACP will also post the notice of owner selection on its electronic web site.

The HACP will make available to any interested party its rating and ranking sheets and documents that identify the HACP basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. The HACP will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The HACP will make these documents available for review at the HACP during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

17-II.C. HOUSING TYPE [24 CFR 983.52]

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of PHA selection, the units substantially comply with HQS.NSPIRE Standards. Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

The PHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The PHA choice of housing type must be reflected in its solicitation for proposals.

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Rehabilitated and Newly Constructed units are defined to mean units that require \$3000 or more in improvements including the per unit costs of common area improvements.

Existing Housing units are defined to mean units that require less than \$3000 in improvements including the per unit costs of common area improvements.

17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

Ineligible Housing Types [24 CFR 983.53]

The PHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, the PHA may not attach or pay PBV assistance for a unit occupied by an owner and the PHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

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Subsidized Housing [24 CFR 983.54]

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit,
- A unit subsidized with any other form of Section 8 assistance,
- A unit subsidized with any governmental rent subsidy,
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing,

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

**17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, ~~FR Notice~~
~~PIH 2013-11/24/08, FR Notice 7/9/10, and FR Notice 6/25/14~~3/13/23]**

The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements.

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

HUD requires new construction and rehabilitation housing that will include forms of governmental assistance other than PBVs to undergo a subsidy layering review (SLR) prior to entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP). Subsidy layering requirements do not apply to existing housing, when PBV is the only governmental assistance, or for projects already subject to a PBV HAP contract, even if the project is recapitalized with outside sources of funding.

When a PHA selects a new construction or rehabilitation project, the PHA must require information regarding all HUD and/or other federal, state, or local governmental assistance to be disclosed by the project owner using Form HUD-2880. Appendix A of FR Notice ~~2/28/203~~23/23 contains a list of all required documentation.

Either HUD or a HUD-approved housing credit agency (HCA) in the PHA's jurisdiction performs the subsidy layering review. The PHA must request an SLR through their local HUD Field Office or, if eligible, through a participating HCA.

If the SLR request is submitted to an approved HCA, and the proposed project-

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based voucher assistance meets HUD subsidy layering requirements, the HCA must submit a certification to HUD and notify the PHA. The PHA may proceed to execute an AHAP at that time if the environmental approval is received.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the Federal Register notice published July 9, 2010.

If before or during the HAP Contract, the owner receives additional HUD or other governmental assistance for the project that results in an increase in project financing in an amount that is equal to or greater than 10 percent of the original development budget, the owner must report such changes to HACP and HACP must notify the Housing Credit Agency or HUD (if there is no participating HCA in their jurisdiction), that a further subsidy layering review is required.

17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT

25 Percent per Project Cap [24 CFR 983.56]

In general, the PHA may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17]

Exceptions are allowed and PBV units are not counted against the 25 percent or 25-unit per project cap if:

- The units are exclusively for elderly families.
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project.
- The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates.
 - For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services.

Under the Fostering Stable Housing Opportunities (FSHO) amendments, units exclusively made available to youth receiving FUPY/FYI assistance may be excepted from the project cap for HAP contracts first effective after December 27, 2020. For more information on excepted units for FUPY, see Chapter 18.

Projects where these caps were implemented prior to HOTMA may continue to use the former exemptions and may renew their HAP contracts under the old requirements, unless the PHA and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

HACP Policy:

HACP will provide PBV assistance for excepted units. Excepted units are defined as follows:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates.

Supportive Services

PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. The project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services. It is not necessary that the services be provided at or by the project but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

Some of the authorized services for exception units include the following:

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- Supervised Medication taking.
- Substance abuse counseling/treatment for current abusers.
- Training in housekeeping and Homemaking skills.
- Money Management.
- Parenting Skills.
- Work Skills and/or Job Training

Promoting Partially Assisted Projects [24 CFR 983.56(c)]

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A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3]. A PHA may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building. A PHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-project cap of less than 25 percent.

HACP Policy:

The HACP may provide assistance for excepted units but will be limited to those designated for the elderly or provide eligible supportive services.

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Beyond that, the HACP will not impose any further cap on the number of PBV units assisted per project.

Housing Opportunities through Modernization Act of 2016 (HOTMA) Changes

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The Housing Opportunities Through Modernization Act of 2016 (HOTMA) made changes to the income-mixing project cap and modified the exception categories to the cap on the number of assisted units in a project. The new caps apply only to projects with HAP effective dates after the HOTMA final implementation rule effective date of April 18, 2017.

Under HOTMA, the new limitation on the number of PBVs in a project is now the greater of 25 units or 25 percent of the units in a project. Owners under HAP contracts predating April 18, 2017 are still subject to the terms of those HAP Contracts and must continue to designate the same number of units and assist the same number of excepted families as provided in such HAP contracts for the duration of the HAP contract and subsequent renewals unless the owner and HACP mutually agree to change the requirements.

Projects not Subject to a Project Cap [FR Notice 1/18/17: Notice PIH 2017-21]

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PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance. To qualify for the exception, the unit must:

- Be covered by a PBV HAP contract that first became effective on or after 4/18/17; and
- In the five years prior to the date the PHA either issued the RFP under which the project was selected or the PHA selected the project without competition, the unit met at least one of the two following conditions:
 - The unit received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for the Elderly (Section 202), Housing for Persons with disabilities (Section 811), the Rental Supplement program,
 - The unit was subject to a rent restriction as a result of one of the following HUD loans or insurance programs: Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for the Elderly (Section 202), or Housing for Persons with Disabilities (Section 811)

Units that were previously receiving PBV assistance are not covered by the exception. Both existing and rehabilitation units are eligible for this exception. Newly constructed units qualify if they meet the definition of *replacement unit* described in FR Notice 1/18/17.

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HACP Policy:

The HACP currently does not have any PBV units that are subject to the per project cap exception.

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17-II.G. SITE SELECTION STANDARDS

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Compliance with PBV Goals, Civil Rights Requirements, and **HQSNSPIRE**

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Site Standards

[24 CFR 983.57(b)]

The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless the PHA has

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determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the PHA administrative plan.

In addition, prior to selecting a proposal, the PHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQSNSPIRE site and neighborhood standards at 24 CFR 982.401(i)-5.703.

HACP Policy:

It is the HACP goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal, the HACP may limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, the HACP will grant exceptions to the 20 percent standard where the HACP determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community,
- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment,
- A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area,
- A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area
- A census tract where there has been an overall decline in the poverty rate within the past five years; or
- A census tract where there are meaningful opportunities for educational and economic advancement.

Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]

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The PHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed,
- Have adequate utilities and streets available to service the site,
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]

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In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed,
- The site must have adequate utilities and streets available to service the site,
- The site must not be located in an area of minority concentration unless the PHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area,
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons,

- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate,
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

RAD Conversions

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HACP must comply with all applicable site selection requirements as set forth in Notice PIH 2012-32rev2 and in accordance with any additional applicable guidance provided by HUD. Site selection requirements set forth at 24CFR § 983.57 shall apply to RAD conversions to PBV assistance. Site selection must be consistent with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964 including implementing regulations at 24 CFR § 1.4(b)(3), Section 504 of the Rehabilitation Act of 1973 including implementing regulations at 24 CFR § 8.4(b)(5), and the Americans with Disabilities Act.

For conversions of assistance that involve new construction that is located in an area of minority concentration (whether on the existing public housing site or on a new site), HUD will conduct a front-end civil rights review of the site to determine whether it meets one of the conditions that would allow for new construction in an area of minority concentration.

HUD may approve new construction in an area of minority concentration, consistent with the regulatory requirements cited above, provided that:

- i. The new construction is located in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a revitalizing area); or
- ii. There are sufficient comparable housing opportunities in areas outside of minority concentration.

In determining if the project meets the requirements above, HUD may consider such factors as: whether the locality has a demonstrated commitment to revitalization that includes or is in addition to the RAD conversion; whether the neighborhood shows signs of revitalizing, through indicators such as declining census tract poverty rates, low or declining violent crime rates or evidence of

increased educational opportunity; or whether there is high private and public investment in retail, commercial or housing development that is already occurring or will imminently occur in the area. HACP must receive prior written approval from HUD following the review that HUD has accepted HACP's certification and supporting documentation prior to entering into binding commitments for new construction.

17-II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]

The HACP activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1869 (42 U.S.C. 4321 et seq.). The HACP may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The HACP may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the HACP, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The HACP must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The HACP must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

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PART III: DWELLING UNITS

17-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

17-III.B. HOUSING QUALITY NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE [24 CFR 983.101]

The housing quality standards (HQS~~NSPIRE~~) for the tenant-based program,

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including those for special housing types, generally apply to the PBV program.

HQSNSPIRE requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

~~The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.~~

Lead-based Paint [24 CFR 983.101(c)]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The HACP must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1891, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

17-III.D. INSPECTING UNITS

Pre-selection Inspection [24 CFR 983.103(a)]

The HACP must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the HACP must inspect all the units before the proposal selection date and must determine whether the units substantially comply with HQSNSPIRE. To qualify as existing housing, units must substantially comply with HQSNSPIRE on the proposal selection date. However, the HACP may not execute the HAP contract until the units fully comply with HQSNSPIRE, unless the HACP has adopted a policy to enter into a HAP contract for units that fail the initial HQSNSPIRE inspection as a result of only non-life-threatening conditions, unless the HACP has adopted a policy to enter into a HAP contract for units that fail the initial HQSNSPIRE inspection as a result of only non-life-threatening conditions.

Pre-HAP Contract Inspections [24 CFR 983.103(b); FR Notice 1/18/17]

The HACP must inspect each contract unit before execution of the HAP contract. The HACP may not enter into a HAP contract covering a unit until the unit fully

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complies with HQSNSPIRE, unless the HACP has adopted a policy to enter into a HAP contract for units that fail the initial ~~HQS~~ inspection as a result of only non-life-threatening conditions.

HACP Policy:

The HACP will not enter into a PBV HAP contract until all units that will be under contract fully comply with HQSNSPIRE.

Turnover Inspections [24 CFR 983.103(c)]

Before providing assistance to a new family in a contract unit, the HACP must inspect the unit. The HACP may not provide assistance on behalf of the family until the unit fully complies with HQSNSPIRE.

Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]

At least once every 24 months during the term of the HAP contract, (or at least triennially for small rural PHAs), the HACP must inspect a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQSNSPIRE. Turnover inspections are not counted toward meeting this inspection requirement.

HACP Policy:

The HACP will inspect on an annual basis a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQSNSPIRE.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the HACP must reinspect 100 percent of the contract units in the building.

Alternative Inspections [24 CFR 983.103(g); Notice PIH 2016-05]

In the case of mixed-finance properties that are subject to alternative inspections, the PHA may rely upon an alternative inspection conducted at least triennially to demonstrate compliance with inspection requirements.

HACP Policy:

The PHA may not rely on alternative inspection standards

Other Inspections [24 CFR 983.103(e)]

The HACP must inspect contract units whenever needed to determine that the contract units comply with HQSNSPIRE standards and that the owner is

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providing maintenance, utilities, and other services in accordance with the HAP contract. The HACP must take into account complaints and any other information coming to its attention in scheduling inspections.

The HACP must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an ~~HQS violation~~ NSPIRE deficiency, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family ~~violation of HQS~~ NSPIRE deficiencies.

In conducting HACP supervisory quality control ~~HQS~~ inspections, the HACP should include a representative sample of both tenant-based and project-based units.

Inspecting PHA-Owned Units [24 CFR 983.103(f)]

In the case of HACP-owned units, the inspections must be performed by an independent agency designated by the HACP and approved by HUD. The independent entity must furnish a copy of each inspection report to the HACP and to the HUD field office where the project is located. The HACP must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the HACP-owner.

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PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS

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17-IV.A. OVERVIEW [24 CFR 983.151]

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT

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In order to offer PBV assistance in rehabilitated or newly constructed units, the HACP must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. The HACP may not enter into an Agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with HQSNSPIRE, and the HACP agrees that upon timely completion of such development in accordance with the terms of the Agreement, the HACP will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

Content of the Agreement [24 CFR 983.152(d)]

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units,
- Number of contract units by area (size) and number of bedrooms and bathrooms,
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent,
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant,
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement,
- Estimated initial rents to owner for the contract units,
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQSNSPIRE standards.

Execution of the Agreement [24 CFR 983.153]

The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner. The PHA may not enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, the PHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the PHA may not enter into the Agreement until the environmental review is completed and the PHA has

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received environmental approval. However, the PHA does not need to conduct a subsidy layering review in the case of a HAP contract for existing housing or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

HACP Policy:

The HACP will enter into the Agreement with the owner within **10 business days** of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

17-IV.C. CONDUCT OF DEVELOPMENT WORK

Labor Standards [24 CFR 983.154(b)]

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. Further, these Davis-Bacon requirements apply to existing PBV units when the nature of any work to be performed either before the execution of the HAP contract or within 18 months after execution constitutes project development. Any development initiated on existing units within 18 months after the effective date of the HAP contract on projects with nine or more contract units triggers Davis-Bacon requirements.

The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates. The addendum to the HAP contract, Form HUD-5679, also includes the required labor standards clauses.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

Equal Opportunity [24 CFR 983.154(c)]

The owner must comply with Section 3 of the Housing and Urban Development Act of 1868 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

Owner Disclosure [24 CFR 983.154(d) and (e)]

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-

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procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

17-IV.D. COMPLETION OF HOUSING

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

Evidence of Completion [24 CFR 983.155(b)]

At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA:

- Owner certification that the work has been completed in accordance with **HQSN SPIRE** and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the PHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

HACP Policy:

The HACP will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The HACP will specify any additional documentation requirements in the Agreement to enter into HAP contract.

PHA Acceptance of Completed Units [24 CFR 983.156]

Upon notice from the owner that the housing is completed, the PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with **HQSN SPIRE standards** and any additional requirements imposed under the Agreement. The PHA must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

If the PHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion,

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the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

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17-V.A. OVERVIEW

The PHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

17-V.B. HAP CONTRACT REQUIREMENTS

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Contract Information [24 CFR 983.203]

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms,
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building,
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit,
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner,
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant,
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8,
- The HAP contract term
- The number of units in any project that will exceed the 25 percent per project cap, which will be set aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and

- The initial rent to owner for the first 12 months of the HAP contract term.

Execution of the HAP Contract [24 CFR 983.204]

The PHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the ~~Housing Quality Standards (HQS)~~, NSPIRE standards, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection ~~as a result of only non-where no~~ life-threatening conditions are present. For existing housing, the HAP contract must be executed promptly after the PHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

HACP Policy:

For existing housing, the HAP contract will be executed within **10 business days** of the HACP determining that all units pass HQS inspection.

For rehabilitated or newly constructed housing, the HAP contract will be executed within **10 business days** of the PHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS NSPIRE standards, and the owner has submitted all required evidence of completion.

Term of HAP Contract [24 CFR 983.205; FR Notice 1/18/17]

The PHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 20 years. In the case of PHA-owned units, the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

HACP Policy:

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the HACP may extend the term of the contract for an additional term of up to 20 years if the HACP determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. A HACP may provide for multiple

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extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the HACP agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of HACP-owned units, any extension of the term of the HAP contract must be agreed upon by the HACP and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

For PBV HAP Contracts that pre-date HOTMA with 10 or 15 year terms, HACP shall extend the term of the HAP contract to 20 years prior to expiration of the initial HAP contract term and permit HAP extensions of 20-year terms if requested. Under no circumstances will the total years of assistance exceed 40 years.

HACP Policy:

When determining whether or not to extend an expiring PBV contract, the HACP will consider several factors including, but not limited to:

- The cost of extending the contract and the amount of available budget authority,
- The condition of the contract units,
- The owner's record of compliance with obligations under the HAP contract and lease(s),
- Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for tenant-based assistance.

Termination by PHA [24 CFR 983.205(c); FR Notice 1/18/17]

The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in

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accordance with the terms of the HAP contract.

In times of insufficient funding, HUD requires that PHAs first take all cost-saving measures prior to failing to make payments under existing PBV HAP contracts. If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

In the event of insufficient funding, HACP shall first take all cost-saving measures prior to failing to make payments under existing PBV HAP contracts.

Termination by Owner [24 CFR 983.205(d)]

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to the PHA. In this case, families living in the contract units must be offered tenant-based assistance.

Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206; FR Notice 1/18/17 and PIH Notice 2017-21]

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the PHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to

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the PHA HCV tenant-based program and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

Remedies for ~~HQS Violations~~NSPIRE Deficiencies [24 CFR 983.208(b)]

The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with ~~HQS~~NSPIRE standards. If the PHA determines that a contract does not comply with ~~HQS~~NSPIRE standards, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

HACP Policy:

The HACP will abate and terminate PBV HAP contracts for non-compliance with ~~HQS~~NSPIRE in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

17-V.C. AMENDMENTS TO THE HAP CONTRACT

Substitution of Contract Units [24 CFR 983.207(a)]

At the PHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, the PHA must inspect the proposed unit and determine the reasonable rent for the unit.

Addition of Contract Units [FR Notice 1/18/17and PIH Notice 2017-21]

The PHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, the PHA must submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

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HACP Policy:

HACP will consider adding contract units to the HAP contract when HACP determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

- The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and
- Voucher holders are having difficulty finding units that meet program requirements.
- Additional PBV assisted units are needed to ensure the financial viability of the project.

14 days prior to an RFP announcement or attaching assistance to additional units without competition, HACP shall submit to the local field office i) the total number of units authorized in the ACC excluding those PBV units entirely excluded from the cap; ii) the total number of units currently committed to PBV excluding those not counting towards the cap; iii) the number of new units proposed to be assisted. HACP shall email the information to pbvsubmission@hud.gov with a copy to the local HUD PIH Office.

**17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES
[24 CFR 983.207(b) and 983.302(e)]**

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.210]

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When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQSNSPIRE standards,
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases,
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements,
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence,
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit,
- The amount of the HAP the owner is receiving is correct under the HAP contract,
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units,
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit
- The family does not own or have any interest in the contract unit (does not apply to family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

17-V.F. ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]

The owner is required to maintain and operate the contract units and premises in accordance with HQSNSPIRE standards, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family. In addition, maintenance, replacement

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and redecoration must be in accordance with the standard practice for the building as established by the owner.

The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with [HQSNSPIRE standards](#).

HACP Policy:

The HACP will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The HACP will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

Vacancy Payments [24 CFR 983.352(b)]

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

HACP Policy:

The HACP will decide on a case-by-case basis if the HACP will provide vacancy payments to the owner not to exceed 60 days. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17-VI.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program.

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This part describes the requirements and policies related to eligibility and admission to the PBV program.

17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

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The PHA may select families for the PBV program from those who are participants in the PHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD, meet asset limitation requirements and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

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HACP Policy:

The HACP will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3.

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In-Place Families [24 CFR 983.251(b)]

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An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the PHA is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the PHA's waiting list. Once the family's continued eligibility is determined (the PHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given

an absolute selection preference and the PHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements. This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

17-VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]

The PHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. The PHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the PHA. If the PHA chooses to offer a separate waiting list for PBV assistance, the PHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a PHA decides to establish a separate PBV waiting list, the PHA may use a single waiting list for the PHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

HACP Policy:

The HACP will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. The HACP will create a waiting list for the following PBV project:

- **Gateway Apartments**
- **Veteran's Square will be a direct referral property where no wait list will be utilized.**

It was past practice for HACP to use the same waiting list for both tenant-based and PBV assistance. HACP used the HCV waiting list for PBV assistance until site-based waiting lists are established for each PBV project. All HCV applicants will be given the first opportunity to be placed on these site-based wait lists. Since then and thereafter, all applicants interested in PBV assistance shall be placed on the project's site-based wait list. Placement on the site-based wait list shall not affect applicants' placement or status on the HCV wait list.

Establishment of Site Based Waiting List for RAD Covered Projects

24 CFR § 983.251 sets out PBV program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents for the Covered Project will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and

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other waiting list policies. HACP shall consider the best means to transition applicants from the current public housing waiting list, including:

- i. Transferring an existing site-based waiting list to a new site-based waiting list. If HACP is transferring the assistance to another neighborhood, HACP must notify applicants on the waitlist of the transfer of assistance, and on how they can apply for residency at the new project site or other sites. Applicants on a project-specific waiting list for a project where the assistance is being transferred shall have priority on the newly formed waiting list for the new project site in accordance with the date and time of their application to the original project's waiting list.
- ii. Informing applicants on the site-based waiting list on how to apply for a PBV program wide or HCV program-wide waiting list.
- iii. Informing applicants on a tenant-based waiting list on how to apply for the HCV or PBV site-based waiting list. The site-based waiting list shall be established in accordance with 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on HACP's public housing community-wide waiting list have been offered placement on the converted project's initial waiting list. In all cases, HACP has the discretion to determine the most appropriate means of informing applicants on the public housing community-wide waiting list given the number of applicants, HACP resources, and admissions requirements of the projects being converted under RAD. HACP may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the population that is less likely to apply, both minority and non- minority groups, through various forms of media (e.g., radio stations, posters, newspapers) within the marketing area; informing local non-profit entities and advocacy groups (e.g., disability rights groups); and conducting other outreach as appropriate. HACP must maintain any site-based waiting list in accordance with all applicable civil rights and fair housing laws and regulations unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies.

To implement this provision, HUD is specifying alternative requirements for 24 CFR §983.251(c)(2). However, after the initial waiting list has been established, HACP shall administer its waiting list for the converted project in accordance with 24 CFR 983.251 (c). HACP will establish and manage separate waiting lists for individual projects that are receiving PBV assistance. Site based waiting lists that are closed for general applications shall remain open for special needs

applicants when there are units with additional restrictions in the PBV inventory for that property.

Site-based waiting lists for properties restricted to elderly households shall deny applicants who are not 62 years of age or older from being placed on the site-based waiting list for that property. Existing non-elderly applicants on these site-based waiting lists shall be removed from these lists and notified of the reason either when they reach the top of the waiting list or together as part of a waiting list update effort.

In an effort to preserve potential eligibility for non-elderly applicants who had previously applied to elderly waiting lists, non-elderly applicants who, at the time they reach the top of a senior waiting list are 55 years of age or older and have applications for other senior developments in the PBV portfolio, will be removed from the list they reached the top of only. The other waiting lists applications will remain active until they reach the top of those waiting lists. At that time, if they are still not 62 years of age or older, they will be removed from that particular waiting list at that time.

17-VI.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]

Applicants who will occupy units with PBV assistance must be selected from the PHA's waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units. The PHA may place families referred by the PBV owner on its PBV waiting list.

Continuum of Care Assisted & PBV VASH Units

In addition to site-based waiting lists for each PBV property, the HACP may maintain a separate wait list for units designated for assistance through the ***Continuum of Care's Coordinated Entry System (CES)***. These units are required to be used to house homeless families that are in the CES for housing assistance referral. When vacancies occur at the PBV properties in these designated units, the owner shall request a suitable referral from the Coordinated Entry System & VASH or affiliated Veteran Support Agencies. Once the owner has reviewed the application and accepted the referral for housing assistance, the owner shall refer the family to the HACP's initial eligibility team for program eligibility determination and leasing. Families will only be placed on this waiting list if they are deemed suitable for occupancy by the owner and immediately processed for intake. This waiting list will not have a preference designation since all additions to the list will immediately be designated for specific units within the PBV portfolio. The only qualifier will be the date and time of the applicant's addition to the CES & PBV Wait List.

Units eligible for CES assistance and VASH priority are as follows:

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- **Veterans Square – 901 Medanos Street, Pittsburg, CA**

Direct Referrals from:

- Coordinated Entry System (CES) for an authorized PBV Project
- VASH or affiliated Veterans Support Agencies in the Bay Area

Income Targeting [24 CFR 983.251(c)(6)]

At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the waiting list must be extremely low-income families. The income targeting requirement applies to the total of admissions to both programs.

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Units with Accessibility Features [24 CFR 983.251(c)(7)]

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

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Preferences [24 CFR 983.251(d), FR Notice 11/24/08]

The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. The PHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

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The PHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the PHA plan. The PHA may not, however, grant a preference to a person with a specific disability [FR Notice 1/18/17].

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If the PHA has projects with "excepted units" for elderly families or supportive services, the PHA must give preference to such families when referring families to these units [24 CFR 983.261(b); FR Notice 1/18/17].

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HACP Policy:

The HACP will provide a selection preference when required by the regulation (e.g., eligible in-place families, elderly families or units with

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supportive services or mobility impaired persons for accessible units). The HACP may not offer any additional preferences for the PBV program or for particular PBV projects or units.

17-VI.E. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant on the waiting list for tenant-based voucher assistance,
- Deny any admission preference for which the applicant qualifies,
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy,
- Remove the applicant from the tenant-based voucher waiting list.

Disapproval by Landlord [24 CFR 983.251(e)(2)]

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

Acceptance of Offer [24 CFR 983.252]

Family Briefing

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

Persons with Disabilities

If an applicant family's head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

Persons with Limited English Proficiency

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The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1864 and Executive Order 13166 (see Chapter 2).

17-VI.F. OWNER SELECTION OF TENANTS

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

Leasing [24 CFR 983.253(a)]

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the PHA from the PHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

HACP Policy:

The owner must notify the HACP in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy. The HACP will make every reasonable effort to refer families to the owner within **10 business days** of receiving such notice from the owner.

Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

HACP Policy:

If any contract units have been vacant for 120 days, the HACP will give

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notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The HACP will provide the notice to the owner within **10 business days** of the 120th day of the vacancy. The amendment to the HAP contract will be effective the 1st day of the month following the date of the HACP's notice.

17-VI.G. TENANT SCREENING [24 CFR 983.255]

PHA Responsibility

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

HACP Policy:

The HACP will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The HACP must provide the owner with an applicant family's current and prior address (as shown in HACP records) and the name and address (if known by the HACP) of the family's current landlord and any prior landlords.

In addition, the HACP may offer the owner other information the HACP may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The HACP must provide applicant families a description of the HACP Policy: on providing information to owners, and the HACP must give the same types of information to all owners.

The HACP may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, ~~or~~ **stalking, or human trafficking** except at the written request or with the written consent of the individual providing the documentation [**see** 24 CFR 5.2007(a)(4)].

HACP Policy:

The HACP will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of the turnover ~~HQS~~ inspection or before.

The HACP will not provide any additional information to the owner, such

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as tenancy history, criminal history, etc.

Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills,
- Caring for a unit and premises,
- Respecting the rights of other residents to the peaceful enjoyment of their housing,
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

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PART VII: OCCUPANCY

17-VII.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

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17-VII.B. LEASE [24 CFR 983.256]

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

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Form of Lease [24 CFR 983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

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If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA *model* lease. The PHA may review the owner's lease form to determine if the lease complies with state and local law. If the PHA determines that the lease does not comply with state or local law, the PHA may decline to approve the tenancy.

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HACP Policy:

The HACP will not review the owner's lease for compliance with state or local law. However, if HACP becomes aware that an owner's lease does not comply with state and local law, then HACP will require the owner to modify the lease in order to comply with state and local law. If the owner does not do this within 15 business days, then HACP may decline to approve the tenancy.

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Lease Requirements [24 CFR 983.256(c)]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant,
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit),
- The term of the lease (initial term and any provision for renewal),
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements,
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.
- RAD provision that the lease will be renewed except for cause.

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Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements,
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

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Initial Term and Lease Renewal [24 CFR 983.256(f)]

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension

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of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease.
- The owner and tenant agree to terminate the lease.
- The PHA terminates the HAP contract.
- The PHA terminates assistance for the family.

Changes in the Lease [24 CFR 983.256(e)]

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257]

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Special RAD Provisions Regarding Project Owner Termination of Tenancy

Project Owner termination of tenancy and eviction procedures for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease which shall not be less than:

- a. A reasonable period of time, but not to exceed 30 days:
 - i. If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - ii. In the event of any drug-related or violent criminal activity or any felony conviction.

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b. 14 days in the case of nonpayment of rent; and

c. 30 days in any other case, except that if a State or local law provides for shorter period of time, such shorter period shall apply.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family's assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

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Continuation of Housing Assistance Payments [24 CFR 982.258]

Housing assistance payments shall continue until the tenant rent equals the rent to the owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

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HACP Policy:

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the HACP of the change and request an interim reexamination before the expiration of the 180-day period.

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Security Deposits [24 CFR 983.259]

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

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HACP Policy:

The HACP will allow the owner to collect a security deposit amount the owner determines is appropriate.

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When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid

tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The HACP has no liability or responsibility for payment of any amount owed by the family to the owner.

17-VII.C. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]

If the PHA determines that a family is occupying a wrong size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

HACP Policy:

The HACP will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within **10 business days** of the HACP's determination. The HACP will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same building or project,
- PBV assistance in another project; and
- Tenant-based voucher assistance.

If the HACP offers the family a tenant-based voucher, the HACP must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the HACP) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the HACP must remove the unit from the HAP contract.

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If the HACP offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit from the HAP contract.

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HACP Policy:

When the HACP offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the HACP will terminate the housing assistance payments at the expiration of this 30-day period.

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The HACP may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

Family Right to Move [24 CFR 983.261]

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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 PHA. If the family wishes to move with continued tenant-based assistance, the family must contact the PHA 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 PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, 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 request to move. A PHA may not terminate assistance if the family, with or without prior notification to the PHA,

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moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed they was threatened with imminent harm from further violence if they remained 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 request to move.

If a family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, the PHA may offer the victim the opportunity for continued tenant-based rental assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

If the family seeks to move with continued assistance but is not in good standing, HACP may deny the request subject to the informal hearing process. Good standing is defined as not owing back rent, not the subject of documented program and lease violations, not under eviction for violation of lease terms or subject to a proposal for termination due to a violation of program obligations.

Emergency Transfers under VAWA [Notice PIH 2017-08]

Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

HACP Policy:

When the victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking has lived in the unit for less than one year, the HACP will provide several options for continued assistance.

The HACP will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the HACP has PBV units. The HACP will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the

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participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in the HACP's public housing program. Such a decision will be made by the HACP based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The HACP has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking, and human trafficking in both its HCV and public housing programs in order to expedite this process. See Section 4-III.C. of this administrative plan.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the HACP will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the HACP has PBV units. The HACP will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to the HACP's public housing program. The HACP has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking, and human trafficking as part of the public housing ACOP in order to expedite this process.

17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.262]

As of April 17, 2018, the PHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates
 - For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

If a family at the time of initial tenancy is receiving and while the resident of an

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excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the PHA and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying HAP on behalf of the family.

Further, when a family (or remaining members of a family) residing in an excepted unit no longer meets the criteria for a "qualifying family" because the family is no longer an elderly family due to a change in family composition, the PHA has the discretion to allow the family to remain in the excepted unit. If the PHA does not exercise this discretion, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA must cease paying housing assistance payments on behalf of the non-qualifying family.

Individuals in units with supportive services who choose to no longer participate in a service or who no longer qualify for services they qualified for at the time of initial occupancy cannot subsequently be denied continued housing opportunity because of this changed circumstance. A PHA or owner cannot determine that a participant's needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the PHA.

The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly family member or long-term or permanent hospitalization or nursing care), the elderly family member no longer resides in the unit. In this case, the unit may continue to be counted as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualified family.

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HACP Policy:

The HACP will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to circumstances beyond the remaining family members' control.

In all other cases, the HACP will provide written notice to the family and owner within **10 business days** of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, the HACP will terminate the housing assistance payments at the expiration of this 30-day period.

The HACP may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

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PART VIII: DETERMINING RENT TO OWNER

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17-VIII.A. OVERVIEW

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

17-VIII.B. RENT LIMITS [24 CFR 983.301]

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Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance,
- The reasonable rent; or

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- The rent requested by the owner.

Certain Tax Credit Units [24 CFR 983.301(c)]

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For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986,
- The contract unit is not located in a qualified census tract,
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard,

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance,
- The reasonable rent; or
- The rent requested by the owner.

Definitions

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A qualified census tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Tax credit rent is the rent charged for comparable units of the same bedroom size in the project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]

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The PHA must determine reasonable rent in accordance with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to

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reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordable with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

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HACP Policy:

The HACP will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, the HACP will use the higher initial rent to owner amount.

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Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]

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When determining the initial rent to owner, the PHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, the PHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment stand amount for use in the PBV program.

Likewise, the PHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

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HACP Policy:

Upon written request by the owner, the HACP will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The HACP will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, the HACP may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if the HACP determines it is necessary due to HACP budgetary constraints.

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Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)]

While small area FMRs (SAFMRs) do not apply to PBV projects, PHAs that operate a tenant-based program under SAFMRs (either by HUD-designation or because the PHA requested HUD approval to use SAFMRs) may apply SAFMRs to all future PBV HAP contracts. If the PHA adopts this policy, it must apply to all future PBV projects and the PHA's entire jurisdiction. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy.

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Further, the PHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective dates of both the SAFMR designation and the PHA administrative plan policy, provided the owner is willing to mutually agree to doing so and the application is prospective. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

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HACP Policy:

The HACP will not apply SAFMRs to the HACP's PBV program.

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Redetermination of Rent [24 CFR 983.302]

The PHA must redetermine the rent to owner upon the owner's request or when there is a 10 percent or greater decrease in the published FMR.

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Rent Increase

If an owner wishes to request an increase in the rent to owner from the PHA, it

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must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the PHA. The PHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

HACP Policy:

An owner's request for a rent increase must be submitted to the HACP 60 days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing.

The HACP may not approve, and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with **HQSNSPIRE**. The owner may not receive any retroactive increase of rent for any period of noncompliance.

Rent Decrease

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

Notice of Rent Change

The rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent. The PHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

HACP Policy:

The HACP will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

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PHA-Owned Units [24 CFR 983.301(g)]

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHA must use the rent to owner established by the independent entity.

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17-VIII.C. REASONABLE RENT [24 CFR 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

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When Rent Reasonable Determinations Are Required:

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The PHA must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a 10 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date,
- The PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant,
- The HAP contract is amended to substitute a different contract unit in the same building or project; or
- There is any other change that may substantially affect the reasonable rent.

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How to Determine Reasonable Rent

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The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

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Comparability Analysis

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

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PHA-Owned Units

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

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Owner Certification of Reasonable Rent

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the PHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

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17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

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Other Subsidy [24 CFR 983.304]

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To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project,
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action,
- A Section 221(d)(3) below market interest rate (BMIR) project,
- A Section 515 project of the Rural Housing Service,
- Any other type of federally subsidized project specified by HUD.

Combining Subsidy

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

Rent Control [24 CFR 983.305]

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

PART IX: PAYMENTS TO OWNER

17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with **HQSNSPIRE standards** and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless

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the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit). The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

17-IX.B. VACANCY PAYMENTS [24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

HACP Policy:

If the HACP determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, the HACP will notify the landlord of the amount of housing assistance payment that the owner must repay. The HACP will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the HACP, the HAP contract may provide for vacancy payments to the owner. The HACP may only make vacancy payments if:

- The owner gives the HACP prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed,
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required

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by the PHA to determine the amount of any vacancy payment.

HACP Policy:

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the HACP of the vacancy in accordance with the policy in Section 17-VI.F. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within **10 business days** of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the HACP may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the HACP within **10 business days** of the HACP's request, no vacancy payments will be made.

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17-IX.C. TENANT RENT TO OWNER [24 CFR 983.353]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

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Tenant and PHA Responsibilities

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

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Utility Reimbursements

If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero. The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

HACP Policy:

The HACP will make utility reimbursements to the family.

17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]

Meals and Supportive Services

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy. In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to the owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by **OwnerOwn**

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

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CHAPTER 18

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PROJECT BASED VOUCHERS (PBV) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM

INTRODUCTION

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This chapter describes HUD regulations and PHA policies related to the Project-Based Voucher (PBV) program under the Rental Assistance Demonstration (RAD) program in eight parts:

Part I: General Requirements. This part describes general provisions of the PBV program, including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Project Selection. This part describes the cap on assistance at projects receiving PBV assistance, ownership and control, and site selection standards.

Part III: Dwelling Units. This part describes requirements related to ~~housing quality~~ **NSPIRE** standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution and term of the HAP contract.

Part V: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VI: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move. Part VII: Determining Contract Rent. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract.

Part VIII: Payments to Owner. This part describes the types of payments owners may receive under this program.

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PART I: GENERAL REQUIREMENTS

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18-I.A. OVERVIEW AND HISTORY OF THE RAD PROGRAM

The Rental Assistance Demonstration (RAD) program was authorized in 2012 in order to assess the effectiveness of converting public housing, moderate rehabilitation properties, and units under the rent supplement and rental assistance payments programs to long-term, project-based Section 8 rental assistance. The program's four primary objectives are to:

- Preserve and improve public and other assisted housing.
- Standardize the administration of the plethora of federally subsidized housing programs and rules. The conversions are intended to promote operating efficiency by using a Section 8 project-based assistance ~~model~~ that has proven successful and effective for over 30 years. In other words, RAD aligns eligible properties more closely with other affordable housing programs.
- Attract private market capital for property renovations. Through the use

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of this model, properties may be able to leverage private debt and equity to make capital repairs.

- Increase tenant mobility opportunities.

Under the first component, a PHA with public housing units may submit an application to HUD to convert some or all of their public housing units to long-term, project-based Section 8 HAP contracts under either:

Project-based rental assistance (PBRA) under HUD's Office of Multifamily Housing Programs. Project-based vouchers (PBVs) under HUD's Office of Public and Indian Housing (PIH).

This chapter will focus on public housing conversions to the PBV program under RAD. In order to distinguish between requirements for public housing conversion under RAD and PBV units under the standard PBV program, we will refer to the standard PBV program and the RAD PBV program.

18-I.B. APPLICABLE REGULATIONS

On the whole, the regulations for both the standard and RAD PBV programs generally follow the regulations for the tenant-based HCV program found at 24 CFR Part 982. However, important parts of the tenant-based regulations do not apply to the project-based program. 24 CFR Part 983 outlines the sections of 24 CFR Part 982 that are not applicable to the project-based program.

For the RAD PBV program, Congress authorized HUD to waive certain statutory and regulatory provisions or establish alternative requirements from the standard PBV program. These provisions are identified in Notice 2019-23 (issued September 5, 2019). Any non-RAD PBV units located in the covered project are subject to the same waivers and alternative requirements where noted in Notice PIH 2019-23 and in this policy.

Otherwise, all regulatory and statutory requirements for the standard PBV program in 24 CFR Part 983 and Section 8(o)(13) of the Housing Act of 1937, and all applicable standing and subsequent Office of Public and Indian Housing (PIH) notices and guidance, including related handbooks, apply to RAD PBV. This includes environmental review, Davis-Bacon, and fair housing requirements.

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act of 2014 (Public Law 113-76, approved January 17, 2014), and the Consolidated and Further Continuing Appropriations Act of 2015 (Public Law 113-235, approved December 6, 2014), the Consolidated Appropriations Act of 2016 (Public Law 114-113, approved December 18, 2015), the Consolidated Appropriations Act, 2017 (Public

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Law 115-31, approved May 5, 2017), and section 237 of Title II, Division L, Transportation, Housing and Urban Development, and Related Agencies, of the Consolidated Appropriations Act, 2018 (Public Law 115-141, approved March 23, 2018) collectively, the "RAD Statute." Requirements specific to the RAD program may be found in the following:

- Generally, public housing projects converting assistance under RAD are bound by the terms of the notice in effect at the time of closing. For all conversion types, HUD reserves the right, in its sole discretion and upon request from the applicant, to apply provisions from previous versions of this notice to program participants that are near conversion.

- Notice PIH 2023-19 amends Notice PIH 2019-23 and Notice PIH 2021-07, and was effective immediately.

- Notice PIH 2019-23 was immediately applicable at the time of closing to all projects converting assistance (notwithstanding execution of a commitment for conversion).

- Notice PIH 2019-23 was published on September 5, 2019. - Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.

- Notice PIH 2012-32, REV-3 was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published January 12, 2017.

- Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which were effective after a 30-day comment period.

- Notice PIH 2012-32, REV-2, was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published June 15, 2015.

- Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.

- RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (6/20)

- RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)

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- Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.

- This Notice applies to all projects that have applied for RAD conversion but have not yet converted as of November 10, 2016.

- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the

First Component.

- This notice may apply to projects that have converted to RAD prior to November 10, 2016, AND who have requested and received approval from HUD to be governed by this notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.

NOTE: The policies in this chapter follow Notice PIH 2016-17. If your project falls under PIH 2014-17, applicable policies may be found in Section 18-I.D.

RAD FAQs (<http://www.radresource.net/search.cfm>)

In other words, the standard PBV program follows many of the same regulations as the tenant-based HCV program, but not all of them, and the RAD PBV program follows many of the same regulations as the standard PBV program, but not all of them.

MTW agencies are able to apply activities impacting the PBV program that are approved in the MTW Plan to properties converting under RAD, provided they do not conflict with RAD requirements.

18-I.C. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to RAD PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

HACP Policy:

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the HACP policies for the tenant-based voucher program contained in this administrative plan also apply to the

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RAD PBV program and its participants. This chapter is intended to
address requirements specific to the RAD PBV program only.

18-I.D. RELOCATION REQUIREMENTS [NOTICE PIH 2016-17]

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For projects that apply for conversion of assistance under the First Component of RAD and will convert November 10, 2016 or later, the following applies [Notice PIH 2016-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed. Any non-RAD PBV units located in the same project are also subject to the right to return.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements, and other requirements which may be applicable such as Section 104(d) of the Housing and Community Development Act of 1974, as amended. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. A written relocation plan is required if the RAD conversion involves permanent relocation (including a move in connection with a transfer of assistance) or temporary relocation anticipated to last longer than a year. While the PHA is not required to have a written relocation plan for temporary relocation lasting one year or less, HUD strongly encourages PHAs to prepare one. Appendix II of Notice PIH 2016-17 contains recommended contents for a relocation plan.
- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24. The obligationobligations due to relocating residents under RAD are broader than URA relocation assistance and payments.
- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to either: a) a unit at the development once rehabilitation or construction is completed, provided the resident's household is not under-housed; or b) a unit in the development which provides the same major features as the resident's unit in the development prior to the implementation of the RAD conversion.

- Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete.
- If the PHA's proposed plans for conversion would preclude a resident from returning to the development, the resident must be given an opportunity to comment and/or object to such plans. PHAs must alter the project plans to accommodate the resident's right to return to the development if the resident would be precluded from returning to the development.
- Examples of project plans that may preclude a resident from returning to the development include, but are not limited to:
 - Changes in the development's bedroom distribution that decrease the size of the units, resulting in the resident being under-housed;
 - The resident cannot be accommodated in the remaining assisted units due to a reduction in the number of assisted units at the development;
 - Income limit eligibility requirements associated with the LIHTC program or another program; and
 - Failure to provide a reasonable accommodation, in violation of applicable law, where reasonable accommodation may include installation of accessibility features that are needed by the resident.
- Residents of a development undergoing conversion that would be precluded from returning to the development may voluntarily accept a PHA or owner's offer to permanently relocate to alternative housing, and thereby waive their right to return to the development after rehabilitation or construction is completed. In this event, the PHA must secure the resident's written consent to a voluntary permanent relocation in lieu of returning to the development. PHAs are prohibited from employing any tactics to pressure residents into relinquishing their right to return or accepting other housing options. Additionally, a PHA may not terminate a resident's lease if the PHA fails to obtain the resident's consent and the resident seeks to exercise the right to return.
- In the case of multi-phase RAD transactions, the resident has a right to return to the development or to other converted phases of the development that are available for occupancy at the time the resident is eligible to exercise their right of return. Generally, the resident's right to return must be accommodated within the development associated with the resident's original unit, however, the PHA may treat multiple converted developments on the same site as one for purposes of right to return. Should the PHA seek to have the resident exercise the right to return at a future phase, the PHA must secure the resident's consent in writing.

- Alternative housing options may involve a variety of housing options, including but not limited to:

- Transfers to public housing
- Admission to other affordable housing properties subject to the applicable program rules - Housing choice voucher (HCV) assistance
- Homeownership programs subject to the applicable program rules
- Other options identified by the PHA

However, for projects that applied for conversion prior to November 10, 2016, the following applies [Notice PIH 2014-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. While the PHA is not required to have a written relocation plan, HUD strongly encourages PHAs to prepare one. Appendix I of Notice PIH 2014-17 contains recommended contents for a relocation plan.
- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24.
- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

18-I.E. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8; 24 CFR 5.105; NOTICE PIH 2016-17]

RAD conversions are governed by the same civil rights authorities that govern HUD-assisted activities in general. These authorities prohibit discrimination and impose affirmative obligations on HUD program participants. PHAs must comply with all applicable fair housing and civil rights laws, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. For example, persons with disabilities returning to the RAD project may not be turned away or placed on a waiting list due to a lack of accessible units. Their need for an accessible unit must be accommodated. See the RAD Fair Housing, Civil Rights, and Relocation Notice [Notice PIH 2016-17] for more information.

PART II: PBV PROJECT SELECTION 18-II.A.

OVERVIEW

Unlike in the standard PBV program where the PHA typically selects the property through an owner proposal selection process, projects selected for assistance under RAD PBV are selected in accordance with the provisions in Notice PIH 2019-23. Therefore, 24 CFR 983.51 does not apply since HUD selects RAD properties through a competitive selection process.

18-II.B. OWNERSHIP AND CONTROL [NOTICE PIH 2019-23]

For projects governed by Notice PIH 2019-23, the following language applies: • Under the PBV program, the contract administrator and the owner listed on the contract cannot be the same legal entity (i.e., the PHA cannot execute a contract with itself). To avoid this situation, the PHA may either:

- 1) Transfer the ownership of the project to a nonprofit affiliate or instrumentality of the PHA (including to a “single-purpose entity” that owns nothing other than the property, which will typically be a requirement of a lender or investor), or
- 2) The PHA can form a related entity that is responsible for management and leasing and can serve as the owner for purposes of the Section 8 HAP contract; in this scenario, the HAP is then executed between the PHA (as the contract administrator) and the PHA’s related entity (as the owner for HAP contract purposes).

Note that in the second scenario, both the PHA and the entity serving as the owner for HAP contract purposes will be required to sign the RAD Use

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Agreement [RAD Resource Desk FAQ 01/24/19].

- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or non-profit entity. HUD may also allow ownership of the project to be transferred to a tax credit entity controlled by a for-profit entity to facilitate the use of tax credits for the project, but only if HUD determines that the

PHA or a nonprofit entity preserves an interest in the profit. The requirement for a public or non-profit entity, or preservation of an interest by a PHA or nonprofit in a property owned by a tax credit entity controlled by a for-profit entity, is satisfied if a public or non-profit entity (or entities), directly or through a wholly-owned affiliate

(1) holds a fee simple interest in the property.

(2) is the lessor under a ground lease with the property owner;

(3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units,

(4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable.

(5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD.

(6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or

(7) demonstrates other ownership and control arrangements approved by HUD. • Control may be established through the terms of the project owner's governing documents or through a Control Agreement, provided that in either case amendment of the terms of control requires consent from HUD. For projects subject to the requirements of Notice PIH 2012-32, REV-3, the following language applies:

- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. The requirement for a public or nonprofit entity is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate

(1) holds a fee simple interest in the property.

(2) is the lessor under a ground lease with the property owner.

(3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units,

(4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable,

(5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD,

(6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or

(7) other ownership and control arrangements approved by HUD.

- If low-income housing tax credits will be used, HUD may allow ownership of the property to be transferred to a tax credit entity controlled by a for-profit entity if HUD determines that the PHA preserves its interest in the property. Preservation of PHA interest in the property includes but is not limited to the following:

- The PHA, or an affiliate under its sole control, is the general partner or managing member.

- The PHA retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;

- The PHA retains control over leasing the property and determining program eligibility.

- The PHA enters into a control agreement by which the PHA retains consent rights over certain acts of the project owner and retains certain rights over the project.

- Other means that HUD finds acceptable For projects that converted assistance prior to the implementation of Notice PIH 2012-32, REV-3, the following language applies:

- During both the initial term and renewal terms of the HAP contract, ownership must be either of the following:

- A public or nonprofit entity that has legal title to the property. The entity must have the legal authority to direct the financial, legal, beneficial, and other interests of the property; or

- A private entity, if the property has low-income tax credits. The PHA must maintain control via a ground lease.

18-II.C. PHA-OWNED UNITS [24 CFR 983.59, FR NOTICE 1/18/17, AND NOTICE PIH 2017-21]

If the project is PHA-owned, rent-setting and inspection functions set out in 24 CFR 983.59 must be conducted by an independent entity approved by HUD.

The definition of ownership or control provided under Notice PIH 2019-23 (listed above) is used specifically to determine whether a PHA retains control over a project for purposes of HUD's requirement for ownership or control of the covered project under RAD. For purposes of determining whether an independent entity will perform certain functions for the project, the definition of PHA-owned under Notice PIH 2017-21 is used. This is the same definition used for standard PBV units. In some cases, a project may meet the RAD definition of ownership or control but may not be considered PHA-owned for purposes of requiring an independent entity.

The independent entity that performs the program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government), or another HUD-approved public or private independent entity.

The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services. The PHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

HACP Policy:

If units converted to PBV under RAD are PHA-owned housing, HACP will use a standard or high performer housing authority in or adjacent to Contra Costa County as the HUD approved independent entity.

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18-II.D. SUBSIDY LAYERING REQUIREMENTS [NOTICE PIH 2019-23; NOTICE PIH 2012-32, REV-3; NOTICE PIH 2012-32, REV-2]

For projects governed by Notice PIH 2019-23, the following language applies:

- In the case of a PHA that will no longer have ACC units as a result of the pending or simultaneous closing or have less than 50 units remaining and

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have initiated procedures to dispose of their final ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project or projects through the conversion. However, the PHA must estimate and plan for outstanding liabilities and costs and must follow Notice PIH 2016-23 or successor notice regarding administrative activities required to terminate the ACC if it has no plans to develop additional public housing.

- In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- Following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless those funds have been identified in the RCC and converted at closing for Section 8 RAD purposes.

For projects governed by Notice PIH 2012-32, REV-3, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered projects. In order to cover the cost of administrative activities required to terminate the ACC, once it no longer has units under the ACC and has no plans to develop additional public housing, the PHA may:

- Designate that a reserve associated with the project be available to fund any public housing closeout costs (such as an operating deficit reserve or a specific PHA closeout reserve). Any funds not needed for public housing closeout costs would remain in such reserve or may be transferred to another reserve associated with the project (such as the replacement reserve). Thereafter, these funds may be used at the project pursuant to the authorized use of the applicable reserve; or

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- Retain funds under the public housing program for this purpose. However, HUD will recapture any public housing funds that a PHA does not expend for closeout costs.

- In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

- In addition, following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved financing plan and included in the approved "sources and uses" attached to the RCC.

For projects governed by the requirements of Notice PIH 2012-32, REV-2, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered project. HUD will recapture any public housing funds that a PHA has not expended once it no longer has units under ACC. In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

18-II.E. PBV PERCENTAGE LIMITATION AND UNIT CAP [NOTICE PIH 2019-23] and Notice PIH 2023-19]

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PBV Percentage Limitation

Covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which under the standard PBV program is set at 20 percent of the authorized units allocated to a PHA under the HCV program. The number of PBV units excluded from the PHA's PBV program cap cannot exceed the number of former public housing units that those PBV units are replacing through the course of the RAD conversion. All PBV units in a covered project that replace former public housing units at the time of conversion are excluded from both the numerator and the denominator when calculating the percent of vouchers that may be project-based by a PHA. To implement this provision, HUD is waiving section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6.

Unit Cap Limitation

When HUD published REV-3 of Notice PIH 2012-32, the cap on the number of assisted units in each project was eliminated. Under the standard PBV program the cap is set at the greater of 25 units or 25 percent of the units in the project. HUD is waiving this requirement, and projects governed by Notice PIH 2019-23 and Notice PIH 2012-32, REV-3 have no cap on the number of units that may receive PBV assistance in a project.

However, for projects that are governed by REV-2 of Notice PIH 2012-32, the cap on the number of PBV units in the project is increased to 50 percent. In these projects, however, provided units met certain exception criteria, the PHA may have converted a larger number of units to RAD PBV. For projects governed by the requirements of Notice PIH 2012-32, REV-2 only, the following language applies:

- In general, the PHA may not provide PBV assistance for units in a project if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than 50 percent of the number of dwelling units (assisted or unassisted) in the project. However, PHAs may exceed the 50 percent limitation when units in the project are occupied by elderly and/or disabled families or families that will receive supportive services. These units are known as "excepted units" and do not count toward the project cap.
- For projects governed by the requirements of Notice PIH 2012-32, REV-2 choosing to include excepted units, additional policy decisions may be required.

HACP Policy:

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For projects governed by Notice PIH 2012-32, REV-2, the PHA will not provide RAD PBV assistance for any excepted units.

18-II.F. SITE SELECTION STANDARDS [NOTICE PIH 2019-23; NOTICE PIH 2016-17]

Site selection requirements set forth in 24 CFR 983.57 apply to RAD PBV, with the exception of 983.57(b)(1) and (c)(2). HUD waives the provisions regarding deconcentration of poverty and expanding housing and economic opportunity for existing housing sites.

To facilitate the uniform treatment of residents and units, any non-RAD PBV units located in the same project are subject to the terms of this provision.

HUD will conduct a front-end civil rights review of the PHA's proposed site in certain circumstances. For RAD PBV conversions that involve new construction located in an area of minority concentration (whether on the existing public housing site or on a new site) HUD will determine whether it meets one of the exceptions that would allow for new construction in an area of minority concentration.

The PHA must ensure that its RAD PBV conversion, including any associated new construction, is consistent with its certification to affirmatively further fair housing and complies with civil rights laws.

18-II.G. ENVIRONMENTAL REVIEW [NOTICE PIH 2019-23; ENVIRONMENTAL REVIEW REQUIREMENTS FOR RAD CONVERSIONS, MARCH 2019]

HUD cannot approve an applicant's financing plan submission unless and until the required environmental review has been completed for the applicant's proposed conversion project and found to meet environmental review requirements. Environmental documents must be submitted no later than the applicant's financing plan. HUD will not issue a RAD Conversion Commitment (RCC) if the project plan does not meet the environmental review requirements described in Attachment 1A of Notice PIH 2019-23. Once an awardee has submitted an application for a specific project, they may not make any choice limiting actions before the completion of the environmental review.

PART III: DWELLING UNITS 18-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the

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RAD PBV program, housing accessibility for persons with disabilities, and special procedures for conducting ~~housing quality~~NSPIRE standards inspections.

**18-III.B. HOUSING QUALITY~~NATIONAL~~ STANDARDS FOR THE
PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE) [24 CFR
983.101] and 24 CFR 5.703]**

The ~~housing quality~~NSPIRE standards (~~HQS~~) for the tenant-based program generally apply to the PBV program. ~~HQS~~NSPIRE requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

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~~The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.~~

Lead-based Paint [24 CFR 983.101(c); Notice PIH 2019-23]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

**18-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH
DISABILITIES [NOTICE PIH 2016-17]**

Federal accessibility requirements apply to all conversions, whether they entail new construction, alternations, or existing facilities. The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

18-III.D. INSPECTING UNITS

Initial Inspection [RAD Quick Reference Guide; Notice PIH 2019-23] and Notice PIH 2023-19]

Under standard PBV regulations at 24 CFR 983.103(b), a PHA may not enter into a HAP contract until the PHA has determined all units comply with HQS/NSPIRE standards. It is the responsibility of the contract administrator to perform this initial inspection (unless units are PHA-owned). In order to accommodate projects in which repairs are conducted, however, HUD has waived this requirement when units are undergoing rehabilitation. In this case, units must meet HQS by the date indicated in the RAD Conversion Commitment (RCC). In this case, units must meet NSPIRE standards by the date indicated in the RAD Conversion Commitment (RCC). To place the unit under HAP contract and commence making payments, the PHA may rely on the owner's certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit or units to be added to the HAP contract instead of conducting an initial inspection. During the period of the work, NSPIRE requirements apply. The PHA must enforce the project owner's obligations and conduct inspections when needed, (for example in response to tenant complaints or other information coming to its attention), and the owner must correct any deficiencies in accordance with NSPIRE requirements (i.e., no more than 24 hours for a life-threatening deficiency, and within no more than 30 calendar days or any PHA-approved extension for other defects, but no later than the date of the completion of the work as indicated in the RCC).

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Turnover Inspections [24 CFR 983.103(c), FR Notice 1/18/17, and Notice PIH 2017-20]

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS/NSPIRE.

Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]

At least once every 24 months (or once every 36 months for small rural PHAs) during the term of the HAP contract, the PHA must inspect a random sample consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with HQS/NSPIRE. Turnover inspections are not counted toward meeting this inspection requirement.

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HACP Policy:

HACP will inspect, on a biennial basis, all RAD PBV-assisted units

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to determine if the contract units and the premises are maintained
in accordance with ~~HQS~~NSPIRE.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

Alternative Inspections [24 CFR 983.103(g); Notice PIH 2016-05]

In the case of mixed-finance properties that are subject to alternative inspections, the PHA may rely upon an alternative inspection conducted at least triennially to demonstrate compliance with inspection requirements.

HACP Policy:

HACP ~~will~~may not rely on alternative inspection standards.

Other Inspections [24 CFR 983.103(e)]

The PHA must inspect contract units whenever needed to determine that the contract units comply with ~~HQS~~NSPIRE, and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an ~~HQS violation~~NSPIRE deficiency, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of ~~HQS~~NSPIRE standards.

In conducting PHA supervisory quality control ~~HQS~~ inspections, the PHA should include a representative sample of both tenant-based and project-based units.

Inspecting PHA-Owned Units [24 CFR 983.103(f); Notice PIH 2017-21]

In the case of PHA-owned units, all required inspections must be performed by an independent entity designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

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PART IV: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT 18-

IV.A. OVERVIEW [RAD PBV QUICK REFERENCE GUIDE 06/20]

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Public housing projects converting under RAD do not employ the PBV Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Instead, following the execution of all requirements contained in the Commitment to Enter into a HAP (CHAP) contract and the RAD Conversion Commitment (RCC), a project is converted immediately to the RAD PBV HAP contract following the closing of any construction financing. Owners of public housing projects converted to PBV assistance via RAD enter into a HAP contract with the PHA that will administer the PBV assistance. Units assisted under a RAD PBV HAP contract must be subject to long-term, renewable use and affordability restrictions.

**18-IV.B. HAP CONTRACT REQUIREMENTS Contract Information
[RAD PBV Quick Reference Guide (06/20); Notice PIH 2019-23]**

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The RAD PBV program uses the PBV HAP contract for new construction or rehabilitated housing (Form HUD-52530A), as modified by the RAD rider (Form HUD-52621). For closings on or after January 1, 2018, HUD incorporated the RAD rider directly into the standard PBV HAP contract. For closing that occurred prior to January 1, 2018, the RAD rider must be attached to the PBV HAP contract.

The distinction between “existing housing” and “rehabilitated and newly constructed housing” is overridden by RAD requirements. The project must also have an initial RAD use agreement. All public housing RAD conversion properties financed with LIHTC are also required to include an LIHTC rider.

Execution and Effective date of the HAP Contract [RADBlast! 7/11/16]

RAD PBV projects do not employ an Agreement to Enter into a Housing Assistance Payments (AHAP) contract like in the standard PBV program. Rather, when the conditions of the CHAP and the RCC are met and the conversion has closed, the PHA executes the HAP contract. Project owners may select the effective date of the HAP contract as the first day of either of the two months following the completed closing.

Term of HAP Contract [Notice PIH 2019-23]

The initial term of the HAP contract may not be for less than 15 years and may be for a term of up to 20 years upon request of the owner and with

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approval of the administering voucher agency. Upon expiration of the initial term of the contract, and upon each renewal term of the contract, the owner must accept each offer to renew the contract, for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. Contracts are subject to the terms and conditions applicable at the time of each offer, and further subject to the availability of appropriations for each year of each such renewal. To implement this provision, is waiving section 8(o)(13)(F) of The United States Housing Act of 1937, which permits a minimum term of one year, as well as 24 CFR 983.205(a), which governs the contract term.

Agreement to Enter into a HAP (AHAP) Contract [Notice PIH 2019-23]

For public housing conversions to PBV, there will be no agreement to enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D, are waived. The definitions for proposal selection date, new construction, rehabilitation, and existing housing are not applicable.

Mandatory Contract Renewal [Notice PIH 2019-23]

By statute, upon contract expiration, the agency administering the vouchers will offer, and the PHA will accept, renewal of the contract for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. The contract is subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently 24 CFR 983.205(b), governing the PHA discretion to renew the contract, will not apply.

In the event that the HAP contract is removed due to breach, non-compliance or insufficiency of appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below 80 percent of the area median income at the time of admission and rents may not exceed 30 percent of 80 percent of median income for an appropriate size unit for the remainder of the term of the RAD use agreement.

Remedies for ~~HQS Violations~~ NSPIRE Deficiencies [24 CFR 983.208(b)]

The PHA may not make any HAP payment to the owner for a contract unit

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during any period in which the unit does not comply with HQSNSPIRE. If the PHA determines that a contract unit does not comply with HQSNSPIRE standards, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

HACP Policy:

HACP will abate and terminate PBV HAP contracts for noncompliance with HQSNSPIRE in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

18-IV.C. AMENDMENTS TO THE HAP CONTRACT

Floating Units [Notice PIH 2019-23]

Upon request of the owner to the voucher agency that will administer the project, HUD will permit assistance to float among units within the project that are the same bedroom size. The unit to which assistance is floated must be comparable to the unit being replaced in quality and amenities.

If the PHA chooses to float units, units are not specifically identified on the HAP contract, rather the HAP contract must specify the number and type of units in the property that are RAD PBV units. The property must maintain the same number and type of RAD units from the time of the initial HAP contract execution forward.

HACP Policy:

HACP will not float assistance among unoccupied units within the project.

Reduction in HAP Contract Units [Notice PIH 2019-23]

Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract.

The PHA may not reduce the number of assisted units without written HUD approval. Any HUD approval of a PHA's request to reduce the number of assisted units under contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, the PHA must reinstate the unit after the family has vacated the

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property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207, or where the development has “floating”.

18-IV.D. HAP CONTRACT YEAR AND ANNIVERSARY DATES [24 CFR 983.302(E)]

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The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. There is a single annual anniversary date for all units under a particular HAP contract.

18-IV.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]

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When the owner executes the HAP contract, they certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;NSPIRE standards;
- The owner is providing all services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner’s knowledge, the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family’s only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for

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comparable unassisted units;

- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;
- The family does not own or have any interest in the contract unit (this does not apply to the family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP contract execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

18-IV.F. VACANCY PAYMENTS [24 CFR 983.352(B)]

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner, including amounts available from the tenant's security deposit.

HACP Policy:

HACP will provide vacancy payments to the owner. The HAP contract with the owner will contain the amount of the vacancy payment and the period for which the owner will qualify for these payments.

PART V: SELECTION OF PBV PROGRAM PARTICIPANTS 18-V.A.

OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION [NOTICE PIH 2019-23]

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Current households cannot be excluded from occupancy at the covered project based on any rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Post-conversion, the tenure of all residents of the covered project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified by Notice PIH 2019-23 (e.g., rent phase-in provisions). For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family. Existing residents at the time of conversion may not be rescreened for citizenship status or have their social security numbers reverified.

Further, so as to facilitate the right to return to the assisted property, this provision must apply to current public housing residents of the converting project that will reside in non-RAD PBV units placed in a project that contain RAD PBV units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR 983 for non-RAD PBV. Any non-RAD PBV units located in the same project are also subject to the right to return.

For the RAD PBV program, in-place family means a family who lived in a pre-conversion property at the time assistance was converted from public housing to PBV under RAD.

18-V.C. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(A) AND (B)]

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)-)], and meet asset limitation requirements. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

HACP Policy:

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HACP will determine an applicant family's eligibility for the RAD PBV program in accordance with the policies in Chapter 3.

18-V.D. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(C); NOTICE PIH 2019-23]

The standard PBV regulations at 24 CFR 983.251 set out program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. Any non-RAD PBV units located in the same project are also subject to these requirements.

For any applicants on the public housing waiting list that are likely to be ineligible for admission to a covered project converting to PBV because the household's TTP is likely to exceed the RAD gross rent, the PHA will consider transferring such household, consistent with program requirements for administration of waiting lists, to PHA's remaining public housing waiting lists or to another voucher waiting list, in addition to transferring such household to the waiting list for the covered project.

To the extent any wait list relies on the date and time of application, the applicants shall have priority on the wait lists to which their application was transferred in accordance with the date and time of their application to the original waiting list. HACP will maintain the project-specific waiting list in accordance with all applicable civil rights and fair housing regulations found at 24 CFR 903.7(b)(2)(ii)-(iv). HACP will provide applicants full information about each development, including an estimate of the wait time, location, occupancy, number and size of accessible units, and amenities like day care, security, transportation, and training programs at each development with a site-based waiting list. The system for selection will be consistent with all applicable civil rights and fair housing laws and regulations and may not be in conflict with any imposed or pending court order, settlement agreement, or complaint brought by HUD.

HACP will assess any changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based on confirmed and accurate PIC occupancy data. At least every three years, the PHA will use independent testers to assure that the site-based system is not being implemented in a discriminatory manner.

HACP will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 18-VI.E.

18-V.E. SELECTION FROM THE WAITING LIST [24 CFR 983.251(C)]

After conversion to RAD PBV, applicants who will occupy units with RAD PBV

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assistance must be selected from the PHA's waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units.

Income Targeting [24 CFR 983.251(c)(6); Notice PIH 2019-23]

At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the waiting list must be extremely-low-income families. The income targeting requirement applies to the total of admissions to both programs.

Families in place at the time of the conversion are exempt from income targeting requirements. New admissions follow standard PBV requirements. Any non-RAD PBV units located in the same project are also subject to these requirements.

Units with Accessibility Features [24 CFR 983.251(c)(7)]

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

Preferences [24 CFR 983.251(d); FR Notice 11/24/08; Notice PIH 2019-23]

The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. HACP Policy: HACP will offer the same preferences for the RAD PBV program that it does for the regular PBV program as outlined in Chapter 17 of this Administrative Plan.

18-V.F. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refusing to list the applicant on the waiting list for tenant-based voucher assistance
- Denying any admission preference for which the applicant qualifies
- Changing the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy
- Removing the applicant from the tenant-based voucher waiting list

Disapproval by Landlord [24 CFR 983.251(e)(2)]

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

Acceptance of Offer [24 CFR 983.252]

Family Briefing

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

HACP shall conduct briefings for new participants and households moving to other units by telephone or other electronic means and refer them to our website for the briefing packet or mail it to the family to have and follow along with staff during the phone briefing. The tenant file will be documented with the date and time of the remote briefing and how the briefing packet was provided to them.

Persons with Disabilities

If an applicant family's head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

Persons with Limited English Proficiency

The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

18-V.G. OWNER SELECTION OF TENANTS [24 CFR 983.253]

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

Leasing [24 CFR 983.253(a)]

During the term of the HAP contract, the owner must lease contract units to

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eligible families that are selected and referred by the PHA from the PHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

HACP Policy:

The owner must notify HACP in writing (mail, fax, or e-mail) within five business days of learning about any vacancy or expected vacancy. HACP will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner. Units set aside for homeless and disabled applicants, will be occupied by referrals from the County's Coordinated Entry System.

18-V.H. TENANT SCREENING [24 CFR 983.255]

PHA Responsibility

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

HACP Policy:

HACP will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The PHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by the PHA) of the family's current landlord and any prior landlords.

In addition, the PHA may offer the owner other information the PHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The PHA must provide applicant families a description of the PHA policy on providing information to owners, and the PHA must give the same types of information to all owners.

The PHA may not disclose to the owner any confidential information provided in

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response to a request for documentation of domestic violence, dating violence, sexual assault, ~~or~~ stalking, **or human trafficking**, except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(c)].

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HACP Policy:

HACP will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of the turnover ~~HQS~~ inspection or before. HACP will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

All households who were living in the Converting property are not subject to further screening for the replacement units.

Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills
- Caring for a unit and premises
- Respecting the rights of other residents to the peaceful enjoyment of their housing
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others
- Compliance with other essential conditions of tenancy.

PART VI: OCCUPANCY

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18-VI.A. OVERVIEW

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After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner, and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

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18-VI.B. LEASE [24 CFR 983.256]

The tenant must have legal capacity to enter into 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. The tenant and the owner must enter into a written lease agreement that is signed by both parties. The tenancy addendum must include, word-for-word, all provisions required by HUD.

Lease Requirements [24 CFR 983.256(c); Notice PIH 2019-23]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant.
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provided by the owner.
- The amount of any charges for food, furniture, or supportive services; and
- For any family admitted following conversion, the lease must specify what will happen if the family elects to remain in its unit after increasing its income such that it requires zero HAP. Specifically, the lease must make clear how the tenant rent will be calculated, and it must address the transition to a new lease. The PHA must include resident procedural rights for termination notification and grievance procedures in the owner's lease. These requirements are not part of the regular PBV program but are required under RAD.

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide) All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f); RAD PBV Quick

Reference Guide 06/20]

Leases for residents who will remain in place (i.e., who will not be relocated solely as a result of conversion) must have an effective date that coincides with—and must be signed on or before—the effective date of the RAD PBV HAP contract.

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g., month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The PHA terminates the HAP contract
- The PHA terminates assistance for the family.

Changes in the Lease [24 CFR 983.256(e)] If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257; Notice PIH 2019-23]

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

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Projects converting from public housing to PBV under RAD have additional procedural rights that do not apply to the standard PBV program. These procedural rights must be included in the owner's lease as well as the PHA's administrative plan. In addition to the regulations at 24 CFR 983.257 related to project owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease, which may not be less than:

- A reasonable period of time, but not to exceed 30 days:
 - If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - In the event of any drug-related or violent criminal activity or any felony conviction
- Not less than 14 days in the case of nonpayment of rent
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply. These provisions apply to non-RAD PBV units located in the project as well.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family's assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

Continuation of Housing Assistance Payments [24 CFR 983.258; Notice PIH 2019-23; Notice PIH 2023-19; RAD PBV Quick Reference Guide 06/20]

~~Current residents living in the property prior to conversion are placed on and remain under the HAP contract when~~

Pre-Conversion Residents

The unit for a family with a TTP that equals or exceeds the gross rent-- (which is defined as the contract rent plus any utility allowance for the unit) must be placed on the PBV HAP contract and the family must be admitted to the PBV program. In this case, and until such time as the family's TTP falls below the gross rent,

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the family will pay the owner the alternate rent which is defined as the lesser of their:

- The family's TTP minus the utility allowance or (subject to any required phase-in); or
- The Zero HAP Rent Cap, which is the lower of:
 - 110 percent for the applicable maximum-rent FMR minus the utility allowance; or
 - In the event the units are subject to more restrictive rent setting requirement under the LIHTC program, or HOME programs (or other programs approved by HUD on a project-specific basis, the rent to owner set to comply with such requirements.

The family will continue to pay this amount until/if circumstances change, and HAP is paid on their behalf. In other words, assistance may subsequently be reinstated if the tenant becomes eligible for assistance. in which case normal PBV rent requirements will apply to the family. In such cases, the resident is still considered a program participant. All of the family obligations and protections under RAD and standard PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the HQS requirements NSPIRE standards, apply as long as the unit is under HAP contract. or added back to the HAP Contract. Any non-RAD PBV units located in the same project are also subject to these requirements.

After a family has paid the Zero HAP Rent Cap for a period of 180 days, the PHA must remove the unit from the HAP Contract and the family's participating in the PBV program ends. If the Covered Project is fully assisted and the family subsequently leaves the property, the PHA must reinstate the unit back onto the HAP contract and admit an eligible family. If the Covered Project is partially assisted and the family subsequently leaves the property, the unit must be reinstated back onto the HAP contract unless the PHA previously substituted a different unit on the HAP contract in accordance with 24 CFR § 983.207 or, where "floating units" have been permitted.

Additionally, if the family continues to reside in the project after the family's unit was removed from the HAP contract, the family may request to return to the PBV program if the family's income subsequently decreases to the extent that the family's TTP is less than the Zero-HAP Rent Cap, and the family is otherwise eligible for PBV assistance. The PHA must, at the earliest opportunity, reinstate the family's unit back onto the HAP contract to provide rental assistance to the family. If the project was partially assisted and the PHA previously substituted a different unit on the HAP contract, the PHA must substitute the family's unit for a vacant unit on the HAP contract if there is a vacant unit at the time of the request, or by doing so as soon as a unit on the HAP contract becomes vacant if there are no vacant units on the HAP contract at the time of the family request

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New Admission Families

Unless a waiver is requested and approved, following conversion, 24 CFR 983.53(d) applies, and any new families referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program. This means a family's TTP may not equal or exceed the gross rent for the unit at admission. The PHA may request a waiver from HUD in order to admit otherwise eligible families whose TTP exceeds gross rent and to allow the units those families occupy to remain under the HAP contract even if the PHA has not paid HAP for the family in 180 days.

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Further, for any new families admitted after the conversion, assistance will be terminated 180 days after the last housing assistance payment on their behalf. The cessation of housing assistance payments does not affect the family's other rights under its lease, nor does it preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within the 180-day window. If a family's assistance is terminated as a result of their zero HAP status, the PHA must remove the unit from the HAP contract. If the project is fully assisted and the family subsequently leaves the property, the PHA must reinstate the unit after the family has vacated the property: and admit an eligible family. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207: or where floating units have been permitted.

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Per the RAD Use Agreement, the owner may charge the family a rent that does not exceed 30 percent of 80 percent of the area median income. If a unit is removed from the RAD PBV HAP contract, then the lease terminates automatically, as stated in the tenancy addendum, as though the RAD PBV HAP contract had been terminated. The tenant must be offered a new lease, which must reflect the new tenant rent. A tenant in this circumstance is no longer a program participant and therefore no longer benefits from any of the rights or protections specific to RAD, or to the PBV program. Should the family subsequently lose employment, the owner may choose to reduce the family's rent, but if the family wishes to be admitted to the HCV/PBV program, then it must be admitted through the waiting list like any other applicant.

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—In circumstances where low RAD PBV rents may prohibit a significant number of otherwise eligible families on the waiting list from being admitted to the project because they do not require subsidy, and which could consequently create an undue concentration of poverty at the project compared to non-RAD PBV projects, a PHA may request a waiver from HUD for the covered project. The waiver will apply the alternative requirements applicable to the pre-conversion residents to new admission families.

HACP Policy:

The PHA will not request waivers from HUD to apply the alternative

requirements applicable to pre-conversion residents to new admission families. **HACP Policy:**

~~The PHA will not request a waiver from HUD to allow new families whose TTP initially exceeds gross rent to occupy units.~~

If a participating family who was admitted after the RAD conversion receives zero assistance and subsequently experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

Security Deposits [24 CFR 983.259; RAD PBV Quick Reference Guide (06/20)]

Owners are permitted to recognize security deposit amounts that have been previously provided by tenants who are in-place at the time of the RAD conversion. If a tenant residing in a converting project has not previously provided a security deposit, then the owner may collect a security deposit at the time of initial lease execution. Otherwise, the security deposit requirements for standard PBV apply.

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

HACP Policy:

HACP will allow the owner to collect a security deposit amount the owner determines is appropriate and commensurate with local and California rental laws.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The PHA has no liability or responsibility for payment of any

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amount owed by the family to the owner.

18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS [NOTICE PIH 2019-23]

Current PH FSS participants will continue to participate in the PHA's FSS program, and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the current fiscal year (FY) PH FSS notice of funding availability (NOFA), to serve those FSS participants who live in units converted to RAD and who will as a result be moving to the HCV FSS program. A PHA must convert the PH FSS program participants at the covered project to their HCV FSS program.

Residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

At the completion of the FSS grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. If the PHA continues to run an FSS program that serves PH and/or HCV participants, the PHA will continue to be eligible (subject to NOFA requirements) to apply for FSS funding.

Current Resident Opportunities and Self-Sufficiency–Service Coordinators (ROSS–SC) program grantees will be able to finish out their current ROSS–SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future public housing ROSS–SC grants.

At the completion of the ROSS-SC grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. Please note that ROSS-SC grantees may be a non-profit or local resident association and this consequence of a RAD conversion may impact those entities.

Any non-RAD PBV units located in the same project are also subject to these requirements.

18-VI.D. RESIDENT PARTICIPATION AND FUNDING [NOTICE PIH 2019-23]

Residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding. Resident rights under RAD conversions

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apply to all PBV assisted units in a project, RAD or PBV.

18-VI.E. MOVES Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260; Notice PIH 2019-23]

All in-place tenants at the time of conversion are eligible to remain in the project. Over-housed families should be moved into appropriately sized units if such units are available in the new or rehabbed project. If appropriately sized units are not available, the existing tenants may continue to be over-housed until an appropriately sized unit becomes available or until the tenant leaves the project. Once the unit turns over, it must be leased to an appropriately sized family. Any non-RAD PBV units located in the same project are also subject to these requirements.

Following conversion, the standard PBV regulations apply. If the PHA determines that a family is occupying a wrong-size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

HACP Policy: The PHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the PHA's determination. The PHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same building or project
- PBV assistance in another project
- Tenant-based voucher assistance

If the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-size or accessible unit at the earlier of the expiration of the term of the family's voucher, including any extension granted by the PHA, or the date upon which the family vacates the unit. If the family does not move out of the wrong-size unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

If the PHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer,

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does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit from the HAP contract.

HACP Policy:

When HACP offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, HACP will terminate the housing assistance payments at the expiration of this 30-day period.

HACP may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

Family Right to Move [24 CFR 983.261]

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 PHA.

Choice Mobility [Notice PIH 2019-23; PRRAC Choice Mobility Implementation Guidance, 8/20]

Family's Right to Choice Mobility

Under RAD PBV, the choice mobility option provides families with the opportunity to move with continued assistance any time after 12 months of occupancy. All residents in converted properties should be aware of their housing mobility rights and of their options in a range of neighborhoods.

HACP Policy:

To ensure that residents are fully aware of and understand their rights under choice mobility, HACP will inform families of their rights under the choice mobility option and the benefits to moving to lower poverty areas, and provide a summary of the steps necessary to exercise this option, at the time the family signs the lease for the RAD PBV unit and

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during their annual recertification.

Information on choice mobility will be made ~~be~~ accessible to persons with disabilities, ensuring any information, electronic or otherwise, is accessible for persons with vision, hearing, and other disabilities. This information will also be made available in accordance with Limited English Proficiency (LEP) requirements, including document translation and use of interpretation services. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements.

Moving with Continued Assistance under Choice Mobility

If the family wishes to move with continued tenant-based assistance, the family must contact the PHA to request the rental assistance prior to providing notice to terminate the lease. If the family terminates the lease in accordance with lease requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If a voucher or other comparable tenant-based assistance is not immediately available, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

Families are eligible to move with continued assistance under choice mobility after 12 months of occupancy. If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

HACP Policy

Prior to providing notice to the owner to terminate the lease, the family may submit a written request to HACP for a choice mobility voucher at any time after completing the 12-month occupancy requirement.

The family will remain eligible to request a choice mobility voucher as long as they continue living at the same covered project. If a family moves from one covered project to another covered project prior to completing their 12-month occupancy requirement, their 12-month clock will reset. The family must wait 12 months from the date of move at the new property before they may request another choice mobility voucher. If a family transfers to a different unit within the same covered project, the 12-month clock does not reset.

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HACP will maintain a combined, agency-wide waiting list for all standard PBV and RAD PBV families wishing to exercise mobility after one year of tenancy. This list will be maintained separately from the tenant-based HCV list. Families on the choice mobility waiting list will be given priority over families on the tenant-based waiting list. The choice mobility waiting list will be organized by date and time of the family's written request to exercise choice mobility. The list will also identify whether families live in standard or RAD PBV units.

The PHA will not subject RAD PBV families applying for choice mobility vouchers to any additional rescreening requirements in order to receive a tenant-based voucher.

Families exercising choice mobility will not be required to vacate their units before a lease has been entered into using their tenant-based voucher. At the time the PHA issues a choice mobility voucher, the PHA will notify the family of their right to remain in their unit if they are unable find a rental unit using the tenant-based voucher.

Turnover Cap

If as a result of RAD, the total number of PBV units (including RAD PBV units) administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD, the PHA may establish a turnover cap. The PHA is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of covered projects. If the PHA chooses to establish a turnover cap and the cap is implemented, the PHA must create and maintain a waiting list in the order requests from eligible households were received.

HACP Policy:

As a result of RAD, the total number of PBV units (including RAD PBV units) administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD. Therefore, HACP will establish a choice mobility cap. HACP will not provide more than three-quarters of its turnover vouchers in a single year to residents of covered projects.

Families who requested a choice mobility voucher and are denied due to the cap will be given priority the following year when choice mobility vouchers are again issued since the choice mobility list will be organized by the date and time of the family's request.

Emergency Transfers under VAWA [Notice PIH 2017-08]

Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

HACP Policy:

When the victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking or human trafficking has lived in the unit for less than one year, HACP will provide several options for continued assistance.

HACP will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where HACP has PBV units. HACP will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible. If assistance is transferred to another development, the PHA will give priority to the participant on the other development's waiting list.

If no units are available for an internal transfer to a PBV development or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in HACP's public housing program. Such a decision will be made by HACP based on the availability of tenant-based vouchers and/or vacancies in public housing units.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the PHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where HACP has PBV units. HACP will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is

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reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to HACP's ~~public~~ housing program.

18-VI.F. REEXAMINATIONS [RAD PBV QUICK REFERENCE GUIDE 06/20]

A family living in a unit converted from public housing to RAD PBV may retain its certification date. Unless a family's annual reexamination is due at the same time as the effective date of the RAD PBV HAP contract, the PHA does not need to recertify tenants at the point of conversion. For each family residing in a unit undergoing conversion of assistance under RAD, the administering PHA will have to submit a form HUD-50058 reflecting the family's admission to the voucher program. The effective date of the new admission will be the same as the effective date of the RAD PBV HAP contract. The form should include the same information previously found on the public housing form 50058, including the next annual reexamination date.

18-VI.G. EARNED INCOME DISALLOWANCE [NOTICE PIH 2019-23]

Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 CFR 5.617. Upon the expiration of the EID for such families, the rent adjustment will not be subject to rent phase-in; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time. Any non-RAD PBV units located in the same project are also subject to these requirements.

Under the HCV program, the EID exclusion is limited to only persons with disabilities [24 CFR 5.617(b)]. In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to only persons with disabilities is waived. The waiver and resulting alternative requirement only applies to tenants receiving the EID at the time of conversion. No other tenant, such as tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion (e.g., due to loss of employment), tenants that move into the property following conversion, etc., is covered by this waiver.

18-VI.H. RESIDENTS' PROCEDURAL RIGHTS [NOTICE PIH

2019-23]

HUD is incorporating additional termination notification requirements for public housing projects that convert assistance under RAD to PBV and to non-RAD PBV units located in the same project beyond those for the standard PBV program. In addition to the regulations at 24 CFR 983.257 related to owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV require that PHAs provide adequate written notice of termination of the lease, which is:

- A reasonable period of time, but not to exceed 30 days:
 - If the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - In the event of any drug-related or violent criminal activity or any felony conviction.
- Not less than 14 days in the case of nonpayment of rent • Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

18-VI.I. INFORMAL REVIEWS AND HEARINGS [NOTICE PIH 2019-23]

In addition to reasons for an informal hearing listed at 24 CFR 982.555(a)(1)(i)–(vi) (See 16-III.C. Informal Hearings for Participants), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to an owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

- For any hearing required under 24 CFR 982.555(a)(1)(i)–(vi), the contract administrator will perform the hearing in accordance with Chapter 16 Part III: Informal Reviews and Hearings, as is the current standard in the program.
- For any additional hearings required under RAD, the PHA (as owner) will perform the hearing. An informal hearing will not be required for class grievances or for disputes between residents not involving the PHA (as owner) or contract

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administrator. This hearing requirement does not apply to
and is not intended as a forum for initiating or negotiating
policy changes between a group or groups of residents and
the PHA (as owner) or contract administrator.

The as owner must give residents notice of their ability to request
an informal hearing as outlined in 24 CFR 982.555(c)(1) for
informal hearings that will address circumstances that fall outside of
the scope of 24 CFR 982.555(a)(1)(i)–(v). (See Chapter 16)

The owner must provide an opportunity for an informal hearing
before an eviction.

PART VII: DETERMINING CONTRACT RENT 18-VII.A. INITIAL CONTRACT RENTS [NOTICE PIH 2019-23]

RAD conversions are intended to be cost-neutral, and therefore,
should not exceed current public housing funding as adjusted for
unit size. Since public housing units do not currently have contract
rents, HUD provides an estimate of current contract rents for each
PHA's public housing units based on current funding as adjusted by
bedroom size. Current funding includes operating subsidy, tenant
rents, capital funds, replacement housing factor funds (RHF), and
demolition disposition transitional funding (DDTF). The funding may
limit the amount of initial rent for a property. A detailed explanation
of the determination of current funding may be found in Attachment
1C of Notice PIH 2019-23. Once the current funding amount is
calculated, the amount is adjusted by bedroom size to determine
the current funding rent. HUD uses the same bedroom adjustment
factors as in the metropolitan FMR schedules where the project is
located.

PHAs may adjust subsidy (and contract rents) across multiple
projects as long as the PHA does not exceed the aggregate
subsidy for all of the projects the PHA has submitted for conversion
under RAD.

Notwithstanding HUD's calculation of the initial contract rent based
on the project's subsidy under the public housing program and any
modifications made to the initial contract rent, the initial rents are set
at the lower of:

- An amount determined by the PHA, not to exceed 110
percent of the fair market rent (FMR) or the PHA's exception
payment standard approved by HUD, or the alternate rent cap in a
PHA's MTW agreement minus any utility allowance

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- The reasonable rent
- The rent requested by the owner

18-VII.B. ADJUSTING CONTRACT RENTS [NOTICE PIH 2019-23; RAD PBV QUICK REFERENCE GUIDE 06/20; PHA Asset Repositioning “How to Apply OCAF for RAD PBV” Webinar]

RAD PBV contract rents are adjusted differently than contract rents in the standard PBV program. At each annual anniversary of the HAP contract, contract rents will be adjusted only by HUD’s operating cost adjustment factor (OCAF) that is applied to the current contract rent, less the portion of the rent paid for debt service, subject to the availability of appropriations for each year of the contract term. As such, section 8(o)(13)(I) of the 1937 Act, and 24 CFR 983.301 and 983.302, concerning rent determinations, do not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in the private market, as determined by the contract administrator in accordance with 24 CFR 983.303.

Contract rents may not exceed the reasonable rent (as determined by the PHA that administers the contract or the independent entity, as applicable), with the exception that the contract rent for each unit may not be reduced below the initial contract rent under the initial HAP contract.

However, the rent to owner may fall below the initial contract rent in the following situations:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 983.55 (prohibition of excess public assistance)
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

The contract rent adjustment will be the lesser of:

- The current contract rent increased by the operating cost adjustment factor (OCAF), which is published annually in the Federal Register; or
- The reasonable rent

The administering PHA (or independent entity, if the project is PHA-owned) is responsible for processing rent adjustments, at each contract anniversary date, in accordance with the prevailing OCAF. The PHA who administers the contract (directly or via an independent entity) must maintain records to demonstrate how OCAF amounts were determined and how rent adjustments were calculated. HUD approval of rent adjustments is not required.

Properties are eligible to receive prior years' OCAF adjustments for years in which the OCAF was not taken. The OCAF must be applied retroactively if it was missed. The PHA administering the contract (or the independent entity) must make sure that all OCAFs have been applied correctly since the RAD closing and calculate the current rents accordingly, including making sure that the RAD PBV contract rents do not exceed the PBV program caps.

HACP Policy:

The owner will request a contract rent adjustment from the PHA who administers the contract within 120 days, but no less than 60 days, prior to the HAP contract anniversary date by submitting a completed OCAF rent adjustment worksheet (Form HUD-9624). The independent entity will validate the data on the form and determine whether the rent exceeds the reasonable rent charged for comparable unassisted units in the private market, in accordance with 24 CFR 983.303. If rents would be unreasonable following application of the requested OCAF, then the rent will only be increased up to the reasonable rent. The independent entity will notify the PHA who administers the contract in writing of the results of its review of the rent adjustment request. The PHA who administers the contract will retain a copy of the worksheet and any other records necessary to demonstrate how the OCAF was used to make rent adjustments for audit purposes. The approved rent adjustment will go into effect via written notice from the PHA that administers the project to the owner. This notice will constitute an amendment to the rents specified on Exhibit A of the RAD PBV HAP contract. The new rents to the owner will take effect on the date of the contract anniversary.

Rent Decrease

Rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

18-VII.C. UTILITY ALLOWANCES [NOTICE PIH 2019-23; RAD PBV QUICK REFERENCE GUIDE 06/20]

When contract rent amounts are set initially, the amount does not include a utility allowance. In general, the utility allowances that are used on the initial HAP contract at closing are the public housing utility allowances that are in effect prior

to conversion. The CHAP must be updated prior to conversion to reflect current public housing utility allowances. At its discretion, a PHA may use the FMRs and utility allowances in effect during the 30-day period immediately before the beginning date of the HAP contract.

After conversion, the PHA that administers the contract must maintain the utility allowance schedule. The PHA may either maintain a utility allowance schedule for tenant-paid utilities in accordance with standard PBV and HCV utility allowance regulations at 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517 respectively, or the PHA may instead apply site specific utility allowances. HUD waived the requirement for the standard PBV program that the HCV utility allowance be used. If a site-specific utility allowance is used, the utility allowance is applicable to non-RAD PBV units in the project and is calculated consistent with Notice H 2015 04.

Each family transitions to the new utility allowance at their first recertification following conversion.

HACP Policy:

HACP will use the HCV utility allowance schedule for the RAD PBV developments unless an alternative utility allowance, such as the California Utility Allowance Calculator, has been adopted to accommodate HOME or other forms of assistance.

18-VII.D. REASONABLE RENT [24 CFR 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

Comparability Analysis

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project- based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

PHA-Owned Units

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

PART VIII: PAYMENTS TO OWNER

18-VIII.A. HOUSING ASSISTANCE PAYMENTS

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with **HQSNSPIRE** and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

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18-VIII.B. VACANCY PAYMENTS [24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

HACP Policy:

If HACP determines that the owner is responsible for a vacancy and as a result is not entitled to keep the housing assistance payment, HACP will notify the landlord of the amount of housing assistance payment that the owner must repay. The PHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner. The PHA may only make vacancy payments if:

- The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner, and that the unit was vacant during the period for which payment is claimed,
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

HACP Policy:

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified HACP of the vacancy in accordance with the policy in Section 18-V.G. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and HACP may require the owner to provide documentation to support the request. If the owner does not provide the

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information requested by HACP within 10 business days of HACP's
request, no vacancy payments will be made.

18-VIII.C. TENANT RENT TO OWNER [24 CFR 983.353]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

Initial Certifications [Notice PIH 2019-23]

For the initial certification, the PHA will use the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of conversion to calculate HAP and tenant rent for the PBV program. The PHA will use this amount until the effective date of the earlier of the family's first regular or interim recertification following the conversion. At that point, the PHA will use the family's TTP based on the recertification and the applicable utility allowance (HCV or RAD PBV site-based, as applicable) to determine PBV HAP and tenant rent. Any non- RAD PBV units located in the same project are subject to the same requirements.

Tenant and PHA Responsibilities

The family is not responsible for the portion of rent to the owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

Utility Reimbursements

If the amount of the utility allowance exceeds the total tenant payment, the PHA

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must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero. The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

HACP Policy:

HACP will make utility reimbursements directly to the family.

18-VIII.D. PHASE-IN OF TENANT RENT INCREASES [NOTICE PIH 2019-23; PHA Asset Repositioning “Phase-in of Tenant Rents” Webinar]

For in-place tenants, if the amount the tenant would pay for rent and utilities (TTP) increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over three years. To implement this provision, HUD is waiving section 3(a)(1) of the 1937 Act, as well as 24 CFR 983.3 (definition of total tenant payment (TTP)) only to the extent necessary to allow for the phase-in of tenant rent increases. For families who were on EID at the time of conversion to RAD PBV, upon the expiration of the EID, the rent adjustment is not subject to rent phase-in.

The PHA must communicate this policy in writing to affected residents. Any non-RAD PBV units located in the same covered project are subject to the terms of the phase-in provisions.

HACP Policy:

HACP will use the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of conversion to calculate the family's tenant rent in PBV. HACP will implement a three-year phase-in for in-place families whose TTP increases by more than the greater of 10 percent or \$25 purely as a result of the conversion as follows:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion: 33 percent of the difference between the most recently paid TTP and the currently calculated PBV TTP. (If the family was paying flat rent immediately prior to conversion, the PHA will use the flat rent amount to calculate the phase-in for Year 1.)
- Year 2: Year 2 annual recertification (AR) and any interim recertification (IR): 50 percent of the difference between the most recently paid TTP and the currently calculated PBV TTP.

- Year 3: Year 3 annual recertification and all subsequent recertifications:
Full calculated TTP.

Once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward.

If the family's income falls during the phase-in period such that the currently calculated PBV TTP falls below the amount that would otherwise be the phased-in rent, the family pays the currently calculated PBV TTP and the phase-in ends. HACP will communicate the PHA's phase-in policy in writing to the family at the time HACP's first determines that the family qualifies for a rent phase-in. Any non-RAD PBV units located in the same project are also subject to rent phase-in requirements.

18.VIII.E. OTHER FEES AND CHARGES [24 CFR 983.354]

Meals and Supportive Services With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, nonpayment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by Owner

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

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EXHIBIT 18-1: PBV DEVELOPMENT INFORMATION
(Fill out one for each development)

Date: [Enter the date on which this form was completed]

DEVELOPMENT INFORMATION

Development Name: [Insert name of PBV development]

Address: [Insert full address of PBV development]

Owner Information: [Insert PBV development owner name and contact information. If development is PHA-owned, enter "PHA-owned."]

Property Management Company: [Insert property management company name and contact information, or enter "None"]

PHA-Owned: [Enter "Yes" or "No." If yes, enter name of independent entity.]

Mixed-Finance Development: [Enter "Yes" or "No." If yes, list other types of funding and units to which other funding applies.]

HAP CONTRACT

Closing Date: [Enter closing date of RAD conversion]

List Which RAD Notice Applies to the Project: [Enter "PIH 2012-32, REV-2," "PIH 2012-32, REV-3," or "PIH 2019-23"]

Effective Date of Contract: [Enter start date of HAP contract]

HOTMA Requirements: [If HAP contract was signed prior to April 18, 2017, enter "Pre-HOTMA." If HAP contract was signed on or after April 18, 2017, enter "Post-HOTMA."]

Term of HAP Contract: [Enter term from HAP contract]

Expiration Date of Contract: [Enter expiration date from HAP contract]

PBV UNITS

	<u>0 BR</u>	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>	<u>4 BR</u>	<u>5 BR</u>	<u>Total</u>
<u># of Units</u>							
<u>Initial Contract Rent</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	

Unit Designation: [Enter "Fixed" or "Floating"]

Accessible Units and Features: [Identify which units are accessible and describe accessibility features or enter "None"]

Target Population: [Describe targeted population in accordance with HAP contract or enter "None"]

Excepted Units (Notice PIH 2012-32, REV-2 Developments Only): [Identify excepted unit types below or enter "None"]

Supportive Services: [Enter "Yes, see Exhibit D of HAP contract" or enter "No"]

Elderly Units: [Enter "Yes" or "No." If yes, identify which units are elderly units.]

Disabled Units [Enter "Yes" or "No." If yes, identify which units are for persons with disabilities.]

WAITING LIST AND SELECTION

Waiting List Type: [Enter "Site-based waiting list," "Combined with HCV," "Waiting list for entire PBV program," or "Merged with another assisted housing program"]

Preferences: [Enter "Same as HCV; see Chapter 4" or describe preferences offered. If different from HCV, note in Section 18.1.C. of this policy.]

Preference Verification: [Enter "Same as HCV; see Chapter 7" or describe for each preference listed above. If different from HCV, note in Section 18.1.C. of this policy.]

For the PBV program, is the income limit the same as the HCV program?

(Note: In mixed-finance developments, other income limits may also apply.)

[Enter "Same as HCV; see Chapter 3" or clearly describe]

OCCUPANCY

Subsidy Standards: [Enter "Same as HCV; see Chapter 5" or describe. If different from HCV, note in Section 18.1.C. of this policy.]

Utilities: [Enter in accordance with HAP contract Exhibit C]

Vacancy Payments: [Enter in accordance with HAP contract Part 1, e, 2 and Section 18-IV.F. within this chapter]

CHAPTER 19

SPECIAL PURPOSE VOUCHERS

INTRODUCTION

Special purpose vouchers are specifically funded by Congress in separate appropriations from regular HCV program funding in order to target specific populations. Special purpose vouchers include vouchers for the following programs:

- Family Unification Program (FUP)
- Foster Youth to Independence (FYI) program
- Veterans Affairs Supportive Housing (VASH)
- Mainstream (MS5)
- Non-Elderly Disabled (NED)
- Stability Voucher program

HACP Policy:

HACP will administer the following types of special purpose vouchers:

- **Veterans Affairs Supportive Housing (VASH)**

This chapter describes HUD regulations and PHA policies for administering special purpose vouchers. The policies outlined in this chapter are organized into five sections, as follows:

- Part I: Family Unification Program (FUP)
- Part II: Foster Youth to Independence (FYI) program
- Part III: Veterans Affairs Supportive Housing (VASH)
- Part IV: Mainstream voucher program
- Part V: Non-Elderly Disabled (NED) vouchers
- Part VI: Stability Voucher program

Except as addressed by this chapter and as required under federal statute and HUD requirements, the general requirements of the HCV program apply to special purpose vouchers.

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Housing Authority of the City of Pittsburgh

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Housing Authority of the City of Pittsburgh
PART I: FAMILY UNIFICATION PROGRAM (FUP)

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**19-I.A. PROGRAM OVERVIEW [Fact Sheet, Housing Choice Voucher
Program Family Unification Program (FUP)]**

Overview

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The **Family Unification Program (FUP)** was authorized by Congress in 1980 to help preserve and reunify families. PHAs that administer the program provide vouchers to two different populations—FUP families and FUP youth. Families eligible for FUP are families for whom the lack of adequate housing is a primary factor in:

- The imminent placement of the family's child or children in out-of-home care; or
- The delay in the discharge of the child or children to the family from out-of-home care.

There is no time limitation on FUP family vouchers, and the family retains their voucher as long as they are HCV-eligible. There is no requirement for the provision of supportive services for FUP family vouchers.

Youth eligible for FUP are those who:

- Are at least 18 years old and not more than 24 years of age;
- Have left foster care or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act at age 16 and older; and
- Are homeless or at risk of becoming homeless.

FUP youth vouchers are limited by statute to a period between 36 and 60 months of housing assistance. Supportive services must also be provided to FUP-eligible youth by the Public Child Welfare Agency (PCWA) or by another agency or organization under contract with the PCWA for the period of time defined in the notice or Notice of Funding Availability/Opportunity (NOFA/O) for which funding was made available.

PHAs that wish to administer FUP vouchers must apply to HUD by submitting an application under an active Notice of Funding Opportunity (NOFO). While the FUP program is administered in accordance with HCV regulations, the FUP NOFOs issued by HUD provide specific program information and requirements. In order to administer the program, the PHA must also form a partnership with a local PCWA who is responsible for determining if the family or youth meets FUP eligibility requirements and referring them to the PHA. Once the referral is received, the PHA is responsible for placing the FUP family or youth on the

PHA's waiting list and determining whether they are eligible to receive assistance under the PHA's HCV program.

Assigning Vouchers [FUP FAQs]

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The PHA may, but is not required to, assign a specific number or percentage of FUP vouchers for FUP youths and FUP families. Unless the PHA assigns a specific number or percentage of FUP vouchers to a designated FUP population, the PHA must serve any referrals (youths or families) that meet all program eligibility requirements up to the PHA's designated FUP program size.

HACP Policy:

HACP has not been awarded any FUP Voucher to date. However, this information is being shared for informational purposes in the event an award is received in the future.

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19-I.B. PUBLIC CHILD WELFARE AGENCY (PCWA)

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Families and youth do not apply directly to the PHA for FUP vouchers. They are instead referred by a PCWA with whom the PHA has entered into a Memorandum of Understanding (MOU). The partnering PCWA initially determines whether the family or youth meets the FUP program eligibility requirements listed in 19-I.C. and 19-I.D. and then refers those families or youths to the PHA.

HUD strongly encourages PHAs and PCWAs to make decisions collaboratively on the administration of the program and to maintain open and continuous communication. The PCWA must have a system for identifying FUP-eligible youth within the agency's caseload and for reviewing referrals from a Continuum of Care (COC) if applicable.

HACP Policy:

HACP has not yet entered into an MOU with the following partnering organizations: Contra Costa County Employment and Human Services Department (EHSD). This partnership is intended if any FUP vouchers are awarded to HACP. Should any new funding be awarded to HACP, a new MOU will be executed to reflect the current FUP Program regulations and requirements.

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Supportive Services

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The PCWA must provide supportive services for the period of time defined in the notice or NOFA/O for which the funding was made available to all FUP-eligible

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youth regardless of their age. The MOU between the PHA and the PCWA should identify the period of time in which supportive services will be provided.

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HACP Policy:

If awarded vouchers, HACP may ensure that any future MOU with EHSD for FUP-eligible youth will provide supportive services for all FUP youth for a period of 36 months.

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Supportive services may be provided to FUP-eligible youth by the PCWA or by another agency or organization under agreement or contract with the PCWA, including the PHA. The organization providing the services and resources must be identified in the MOU. The following services must be offered:

- Basic life skills information or counseling on money management, use of credit, housekeeping, proper nutrition or meal preparation, and access to health care (e.g., doctors, medication, and mental and behavioral health services);
- Counseling on compliance with rental lease requirements and with HCV program participant requirements, including assistance or referrals for assistance on security deposits, utility hook-up fees, and utility deposits;
- Providing such assurances to owners of rental property as are reasonable and necessary to assist a FUP-eligible youth to rent a unit with a FUP voucher;
- Job preparation and attainment counseling (where to look and how to apply, dress, grooming, relationships with supervisory personnel, etc.); and
- Educational and career advancement counseling regarding attainment of general equivalency diploma (GED), or attendance or financing of education at a technical school, trade school, or college, including successful work ethic and attitude ~~modelss~~.

HACP Policy:

Additional supportive services have not been identified at this time. However as additional support services are identified as being needed, HACP shall work with EHSD to ensure that they will be offered.

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A FUP-eligible youth cannot be required to participate in these services as a condition of receipt of the FUP voucher.

19-I.C. FUP FAMILY VOUCHER ELIGIBILITY CRITERIA

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FUP family assistance is reserved for eligible families that the PCWA has certified are a family for whom a lack of adequate housing is a primary factor in:

- The imminent placement of the family's child or children in out-of-home care, or
- The delay in the discharge of the child or children to the family from out-of-home care.

Lack of adequate housing means the family meets any one of the following conditions:

• Living in substandard housing, which refers to a unit that meets any one of the following conditions:

- Does not have operable indoor plumbing
- Does not have a usable flush toilet inside the unit for the exclusive use of a family or youth
- Does not have a usable bathtub or shower inside the unit for the exclusive use of a family or youth
- Does not have electricity, or has inadequate or unsafe electrical service
- Does not have a safe or adequate source of heat
- Should, but does not, have a kitchen
- Has been declared unfit for habitation by an agency or unit of government, or in its present condition otherwise endangers the health, safety, or well-being of the family or youth
- Has one or more critical defects, or a combination of intermediate defects in sufficient number or to the extent that it requires considerable repair or rebuilding. The defects may result from original construction, from continued neglect or lack of repair, or from serious damage to the structure • Being homeless as defined in 24 CFR 578.3 • Living in a unit where the presence of a household member with certain characteristics (i.e., conviction for certain criminal activities) would result in the imminent placement of the family's child or children in out-of-home care, or the delay in the discharge of the child or children to the family from out-of-home care
- Living in housing not accessible to the family's disabled child or children due to the nature of the disability
- Living in an overcrowded unit, which is defined as living in a unit where one of the following conditions has been met: - The family is separated from its child or children and the parents are living in an otherwise standard housing unit, but, after the family is reunited, the parents'

housing unit would be overcrowded for the entire family and would be considered substandard; or

- The family is living with its child or children in a unit that is overcrowded for the entire family and this overcrowded condition may result, in addition to other factors, in the imminent placement of its child or children in out-of-home care.
- For purposes of this definition, the determination as to whether the unit is overcrowded is made in accordance with the PHA subsidy standards in Chapter 5, Part III of this policy.

Since HUD does not define *imminent placement*, the partnering PCWA may use its discretion to determine whether the potential out of home placement of the family's child or children is imminent [FUP FAQs].

19-I.D. FUP YOUTH VOUCHER ELIGIBILITY CRITERIA

While FUP family vouchers operate as regular HCVs after the family is referred from the PCWA, there are several aspects of the FUP youth vouchers that make them distinct from the FUP family vouchers and from regular HCVs.

Eligibility Criteria

A FUP-eligible youth is a youth the PCWA has certified:

- Is at least 18 years old and not more than 24 years of age (has not yet reached their 25th birthday); - The FUP youth must be no more than 24 years old at the time the PCWA certifies them as eligible and at the time of HAP contract execution.
- Has left foster care or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act; - Foster care placement can include, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, ~~child-care~~childcare institutions, and pre-adoptive homes in accordance with 24 CFR 5.576.
- Is homeless or at risk of becoming homeless at age 16 or older; - *At risk of being homeless* is fully defined at 24 CFR 576.2. o This includes a person that is exiting a publicly funded institution, or system of care (such as a healthcare facility, a mental health facility, foster care or other youth facility, or correction program or institution). o Therefore, youth being discharged from an institution may be eligible for a FUP voucher [FUP FAQs].
- Has an annual income at or below 30 percent of area median income; and

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- Does not have sufficient resources or support networks (e.g., family, friends, faith-based or other social networks) immediately available to prevent them from moving to a supervised publicly or privately operated shelter designed to provide temporary living arrangements.

19-I.E. ASSISTANCE PERIOD [FR Notice 1/24/22]

Maximum Assistance Period

Although there is no time limit on FUP family vouchers, FUP youth vouchers are limited by statute. Unless the FUP youth meets an exception outlined below, after 36 months of assistance, the FUP youth voucher must be terminated. However, any period of time for which no subsidy (HAP) is being paid on behalf of the youth does not count toward the 36-month limitation.

If the FUP youth does meet the requirements outlined below, the statutory limit on FUP assistance is a total of 60 months of FUP voucher assistance [FR Notice 1/24/22].

Extension of Assistance

FUP youth who first leased or lease a unit after December 27, 2020, may be eligible for an extension of assistance up to 24 months beyond the 36-month time limit (for a total of 60 months of assistance).

While FUP youth cannot be required to participate in the Family Self-Sufficiency (FSS) program as a condition of receipt of assistance, an eligible youth who participates in the FSS program and is in compliance with the applicable terms and conditions of the program is entitled to receive assistance for up to an additional 24 months. A FUP youth must accept an FSS slot if it is offered to them prior to the 36-month mark in order to receive an extension of assistance (unless the youth meets one of the statutory exceptions described below).

Statutory Exceptions

A FUP youth will be entitled to receive an extension of assistance for up to 24 months beyond the 36-month time limit without participating in the PHA's FSS program if they certify that they meet one of the exceptions below:

- The FUP youth is a parent or other household member responsible for the care of a dependent child under the age of six or for the care of an incapacitated person.

HACP Policy:

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The HACP defines *incapacitated person* as a person who is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act.

The HACP will apply this exception in a manner that provides extensions of FUP youth assistance to the broadest population possible consistent with the statutory requirements.

The FUP youth will be required to self-certify that they meet this exception on a HACP-provided form. This certification is the only documentation that the FUP youth must submit. The child or incapacitated person is not required to reside in the household in order for the youth to certify they meet this exception. For example, a child in a joint custody arrangement under the age of six who resides in the household only part-time may qualify the youth for this exception.

- The FUP youth is a person who is regularly and actively participating in a drug addiction or alcohol treatment and rehabilitation program.

HACP Policy:

HACP will define *regular and active participation* in a manner that provides extensions of FUP youth assistance to the broadest population possible consistent with the statutory requirements.

The FUP youth will be required to self-certify that they meet this exception on an HACP-provided form. This certification is the only documentation that the FUP youth must submit.

- The FUP youth is a person who is incapable of complying with the requirement to participate in an FSS program as described above or engage in education, workforce development, or employment activities as described below, as applicable, due to a documented medical condition.

HACP Policy:

HACP does not administer the FSS program and will not apply this requirement.

The FUP youth will be required to self-certify that they meet this exception on an HACP-provided form. This certification is the only documentation that the FUP youth must submit.

A FUP youth that meets one of the above exceptions must still be offered an opportunity to enroll in HACP's FSS program (if it is available to them) and receive any supportive services available to FUP youth. A FUP youth may choose to participate in an FSS program or engage in education, workforce

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development, or employment activities, even if they meet one of the above statutory exceptions.

Education, Workforce Development, or Employment Activities

If a PHA that carries out an FSS program is unable to offer a FUP youth an FSS slot during their first 36 months of receiving FUP youth assistance, the youth is considered to have been “unable to enroll” in the program and may have their voucher extended by meeting the education, workforce development, or employment criteria described below:

- The youth was engaged in obtaining a recognized postsecondary credential or a secondary school diploma or its recognized equivalent.

HACP Policy:

HACP may use the definitions of *recognized postsecondary credential* and *secondary school diploma or its recognized equivalent* under the Workforce Innovation and Opportunity Act (WIOA). WIOA defines a *recognized postsecondary credential* as a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the state involved or federal government, or an associate or baccalaureate degree (29 U.S.C. 3102). Examples of a recognized postsecondary credential include, but are not limited to, an associate’s degree, bachelor’s degree, occupational licensure, or occupational certification (see U.S. Department of Labor, Training and Employment Guidance Letter No. 10–16, Change 1). For the purpose of WIOA, the U.S. Department of Labor defines a *secondary school diploma or its recognized equivalent* as a secondary school diploma (or alternate diploma) that is recognized by a state and that is included for accountability purposes under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the “Every Student Succeeds” Act (ESSA). A secondary school equivalency certification signifies that a student has completed the requirement for a high school education. Examples of a secondary school diploma or its recognized equivalent include, but are not limited to, obtaining certification of attaining passing scores on a state-recognized high school equivalency test, earning a secondary school diploma or state-recognized equivalent, or obtaining certification of passing a state-recognized competency-based assessment.

- The youth was enrolled in an *institution of higher education*, as such term is defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or an institution that meets the definition of a *proprietary institution of higher education* or a *postsecondary vocational institution* under sections 102(b)(1) and (c)(1) of the Higher Education Act of 1965 (20 U.S.C. 1002(b)(1) and (c)(1)), respectively.

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HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers, youth must be enrolled in education activities on at least a half-time basis, as defined by the institution that they attend. However, HACP may make exceptions to this requirement if the youth is unable to enroll in a sufficient number of classes due to a lack of course offerings by the educational institution where the youth is enrolled.

-The youth was participating in a career pathway, as such term is defined in Section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102). The term *career pathway* means a combination of rigorous and high-quality education, training, and other services that:

- Aligns with the skill needs of industries in the economy of the state or regional economy involved.

- Prepares an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1837 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) (referred to individually in this Act as an *apprenticeship*, except in section 3226 of this title);

- Includes counseling to support an individual in achieving the individual's education and career goals.

- Includes, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster.

- Organizes education, training, and other services to meet the needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable.

- Enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and

- Helps an individual enter or advance within a specific occupation or occupational cluster.

- The youth was employed.

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers, HACP will consider the youth to be employed if they work a minimum of 20 hours per week. HACP may make exceptions to this requirement if the youth's hours are reduced due to circumstances beyond

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their control or the youth must temporarily reduce their work hours due to a verified family emergency.

FSS Enrollment at 24 Months

If the FUP youth has not been provided an opportunity to enroll in the FSS program during the first 24 months of FUP assistance, HUD encourages the PHA to remind the youth at the 24-month reexamination of the education, workforce development, and employment requirements described above so that the youth has enough time to meet these requirements prior to the expiration of the 36-month time period for FUP assistance.

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers: If the FUP youth has not been provided an opportunity to enroll in the FSS program during the first 24 months of FUP assistance, HACP will make an effort to remind the youth at their second regular ~~reexam~~reexamination of the education, workforce development, and employment requirements described above.

FSS Enrollment Between 36 and 48 Months

If an FSS slot becomes available between the 36-month and 48-month mark:

- The PHA must offer the slot to a FUP youth who had their voucher extended based on meeting the education, workforce development, or employment requirement listed above, or one of the statutory exceptions listed above (even if the youth previously declined an FSS slot because they met one of the statutory exceptions).
- The PHA must work with the youth to determine whether enrollment in FSS is feasible and in their best interest given any education, workforce development, or employment activities that the youth is engaged in and any statutory exceptions that apply to the youth, as well as the remaining time on their voucher.
- If the FUP youth accepts the FSS slot, the PHA must work with the youth to establish Contract of Participation goals and an Individual Training and Services Plan (ITSP) that can be accomplished within the time period left on the voucher.

If the FUP youth is offered an FSS slot prior to the 36-month mark, the youth:

- Will be required to enroll in the FSS program in order to receive an extension of assistance at the end of the 36-month time period (unless they meet one of the statutory exceptions described above).

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- Will not be considered to have been “unable to enroll” in the FSS program as described above, and as a result, will not be eligible to receive an extension of assistance based on meeting the education, workforce development, or employment requirements described above.

FSS Enrollment After 48 Months The PHA may, but is not required to, offer a FUP youth an FSS slot that becomes available between the 48-month mark and the 60-month mark, since the youth will have already received their second and final extension.

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers or FSS are ever administered: If an FSS slot becomes available between the 48 and 60-month marks, HACP will not offer the FSS slot to a FUP youth.

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Extensions of Assistance

At the 36-month and 48-month reexamination, the PHA must extend FUP youth assistance if the youth is participating in and in compliance with the FSS program as long as the youth is still eligible for the HCV program.

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In any case, the FUP youth cannot receive more than a total of 60 months of FUP youth voucher assistance, even if the FSS Contract of Participation time period extends beyond the voucher 60- month mark.

No FSS Program or Unable to Enroll in FSS

If a PHA does not carry out an FSS program or the FUP youth has been unable to enroll in the program during the first 36 months of receiving FUP assistance, the FUP youth is entitled to receive an extension of assistance for up to two successive 12-month periods beyond the 36-month time limit provided that the youth engaged in at least one of the education, workforce development, or employment activities described above for not less than nine months of the 12-month period preceding each extension. In order to meet the nine months out of the preceding 12 months requirement, the youth may have engaged in one of the education, workforce development, or employment activities described above or a combination of these activities.

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Verification Prior to Annual Reexam

In order to provide an extension of assistance, the PHA must verify compliance with the above requirements at the end of the 36-month time period and the 48-month time periods. The PHA does not need to verify compliance with these

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requirements at the end of the 60-month time period since the maximum length of assistance is 60 months.

To verify compliance with the education, workforce development, or employment requirement or one of the statutory exceptions, the PHA must provide the FUP youth written notification informing them that they may receive an extension of their FUP assistance and providing instructions on how the youth may demonstrate that they meet one of these conditions. This notification must be provided sufficiently in advance of the end of the 36-month or 48-month time periods, as applicable, to allow the FUP youth to demonstrate that they meet the education, workforce development, or employment requirement, or one of the statutory exceptions, and for the PHA to conduct an annual reexamination prior to the expiration of the FUP assistance.

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers & administer FSS, HACP will verify compliance with the education, workforce development, or employment requirement, or one of the statutory exceptions, at the end of the 36-month and 48-month time periods prior to the FUP youth's scheduled annual reexamination. HACP will not verify compliance at the end of the 60-month time period. HACP will provide each FUP youth on HACP's program with a written notification informing them that they may receive an extension of their FUP assistance if they meet conditions outlined in this chapter and providing them with instructions on how they may demonstrate compliance at least 60 days prior to their scheduled annual ~~reexam~~reexamination date. When necessary, HACP will provide this notification in a format accessible to FUP youth with disabilities and in a translated format for FUP youth with limited English proficiency in accordance with Chapter 2.

HACP does not participate in this program. However, if awarded FUP Vouchers, HACP will use the following verification methods to verify a FUP youth's eligibility for voucher extensions:

- To verify compliance with the FSS requirement, HACP will examine its records to confirm, or obtain confirmation from HACP's FSS program staff, that the FUP youth participant is in compliance with FSS program requirements and has not been terminated from the FSS program.
- To meet the education, workforce development, or employment requirement, HACP will verify that the FUP youth was engaged in at least one education, workforce development, or employment activity for at least nine months of the 12-month period immediately preceding the end of 36-month or 48-month time period, as applicable.
- Due to the timing of when HACP verifies compliance and conducts the annual reexamination, the FUP youth may have not yet met the nine-

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month requirement but may be able to demonstrate that they will meet the nine-month requirement as of the end of the 36-month or 48-month time period. In such cases, the FUP/FYI youth will still be considered to have met the requirements.

- In order for the FUP youth to meet one of the statutory exceptions described above, the youth must submit a certification to HACP that they meet one of these exceptions. This certification is the only documentation that the FUP youth must submit in order to demonstrate that they meet one of the statutory exceptions.

A FUP youth who received an extension of voucher assistance at the end of the 36-month time period based on meeting one of the conditions described in this chapter does not have to meet the same conditions when they reach the end of the 48-month time period. The FUP youth may demonstrate that they meet a different condition in order to receive an extension of their assistance.

If the PHA determines that the youth meets one of the statutory conditions, the PHA would then conduct an annual reexamination. If the annual reexamination determines that the youth is still eligible for the HCV program, the PHA must provide the FUP youth the extension of voucher assistance.

Termination of Assistance for Failure to Meet Conditions

Failure of the FUP youth to meet one of the above conditions will only impact their ability to receive subsequent extensions of assistance. It will not serve as a basis for terminating the FUP assistance prior to the annual reexam.

If the FUP youth does not meet any of the conditions described in in this chapter, the youth is subject to the statutory time limit of 36 months or the time limit of any extension that the youth has already received, and the FUP youth voucher must be terminated once the youth reaches this time limit. The calculation of the time limit begins from the date the first HAP contract is signed (for tenant-based 18-12) vouchers or from the date the youth entered into the initial lease agreement (for project-based vouchers). The number of months is calculated based on the number of months that HAP subsidy is being paid on behalf of the youth, not the number of months that the youth is in the FUP youth program. Prior to termination, the PHA must offer the FUP youth the opportunity to request an informal hearing, in accordance with Chapter 16.

19-I.F. REFERRALS AND WAITING LIST MANAGEMENT

Referrals

The PCWA must establish and implement a system to identify FUP-eligible families and youths within the agency's caseload and make referrals to the PHA. The PCWA must certify that the FUP applicants they refer to the PHA meet FUP eligibility requirements. The PHA is not required to maintain full documentation

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that demonstrates the family's or youth's FUP eligibility as determined by the PCWA but should keep the referral or certification from the PCWA.

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers, As part of the MOU, HACP and EHSD will identify staff positions to serve as lead FUP liaisons. These positions will be responsible for transmission and acceptance of FUP referrals. EHSD must commit sufficient staff and resources to ensure eligible families and youths are identified and determined eligible in a timely manner.

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When FUP vouchers are available, HACP's liaison responsible for acceptance of referrals will contact the EHSD's FUP liaison via email indicating the number of vouchers available and requesting an appropriate number of referrals. No more than 10 business days from the date EHSD receives this notification, EHSD liaison will provide HACP with a list of eligible referrals include the name, address, and contact phone number for each adult individual who is being referred; a completed release form for each adult family member; and a written certification for each referral indicating the youth or family is FUP-eligible. HACP will maintain a copy of the referral or certification from EHSD in the participant's file along with other eligibility paperwork.

A PHA must serve any referrals (youths or families) that meet all program eligibility requirements. If a PHA determines that it has received a sufficient number of referrals from the PCWA so that the PHA will be able to lease all FUP vouchers awarded, the PHA may request that the PCWA suspend transmission of referrals. If the PHA determines that additional referrals will be needed after it has made such a request, the PHA may request that the PCWA resume transmission of referrals [Notice PIH 2011-52].

Waiting List Placement

A family that is already participating in the regular HCV program cannot be transferred to a FUP voucher.

Once a referral is made, the PHA must compare the list of PCWA referrals to its HCV waiting list to determine if any applicants on the PCWA's referral list are already on the PHA's HCV waiting list. Applicants already on the PHA's HCV waiting list retain the order of their position on the list. Applicants not already on the PHA's HCV waiting list must be placed on the HCV waiting list.

If the PHA's HCV waiting list is closed, the PHA must open its HCV waiting list in order to accept new FUP applicants. If necessary, the PHA may open its waiting list solely for FUP applicants, but this information must be included in the PHA's

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notice of opening its waiting list (see section 4-II.C., Opening and Closing the
Waiting List of this administrative plan).

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers, Within **10 business days** of receiving the referral from EHSD, HACP will review the HCV waiting list and will send EHSD a list confirming whether or not referrals are on the waiting list.

- Referrals who are already on the list will retain their position and the list will be notated to indicate the family or youth is FUP-eligible.
- For those referrals not already on the waiting list, HACP will work with EHSD to ensure they receive and successfully complete a pre-application or application, as applicable. Once the pre-application or application has been completed, HACP will place the referral on the HCV waiting list with the date and time of the original referral and an indication that the referral is FUP-eligible.

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Waiting List Selection

The PHA selects FUP-eligible families or youths based on the PHA's regular HCV waiting list selection policies in Chapter 4, including any preferences that may apply.

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19-I.G. PHA HCV ELIGIBILITY DETERMINATION

Once a FUP-eligible family or youth is selected from the HCV waiting list, the PHA must determine whether the family or youth meets HCV program eligibility requirements. Applicants must be eligible under both FUP family or youth eligibility requirements, as applicable, and HCV eligibility requirements as outlined in Chapter 3 of this policy.

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The PCWA may, but is not obligated to, provide information to the PHA on the family's criminal history.

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers, HACP will run its own criminal background checks on FUP-eligible families pursuant to policies in this plan for HCV program participants.

HACP will consider the information in making its eligibility determination in accordance with the PHA's policies in Chapter 3, Part III.

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Additional FUP Eligibility Factors [FUP FAQs]

For FUP family vouchers, the family must remain FUP-eligible thorough lease-up.

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- If, after a family is referred by the PCWA but prior to issuing a family FUP voucher, the PHA discovers that the lack of adequate housing is no longer a primary factor for the family not reunifying, the FUP voucher may not be issued to the family.

- Similarly, if the FUP voucher has already been issued before the PHA discovers that the reunification will not happen, but the family has not yet leased up under the voucher, the PHA must not execute the HAP contract, as the family is no longer FUP-eligible. FUP-eligible youth must be no more than 24 years old both at the time of PCWA certification and at the time of the HAP execution. If a FUP youth is 24 at the time of PCWA certification but will turn 25 before the HAP contract is executed, the youth is no longer eligible for a FUP youth voucher.

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers: Any applicant that does not meet the eligibility criteria for the HCV program listed in Chapter 3 or any eligibility criteria listed in this section will be notified by HACP in writing following policies in Section 3-III.F., including stating the reasons the applicant was found ineligible and providing an opportunity for an informal review.

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19.I.H. LEASE UP [FR Notice 1/24/22]

Once the PHA determines that the family or youth meets HCV eligibility requirements, the family or youth will be issued a FUP voucher in accordance with PHA policies.

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During the family briefing, PHAs must inform the FUP youth of:

- The extension of assistance provisions and requirements.
- The availability of the FSS program and offer them an FSS slot, if available, or offer to place them on the FSS waiting list (provided the PHA has an FSS program); and
- Supportive services available to them, the existence of any other programs or services, and their eligibility for such programs and services. However, participation in supportive services cannot be required as a condition of receiving FUP youth assistance.

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers: Eligible applicants will be notified by HACP in writing following policies in Section 3-III.F. of this administrative plan. FUP families will attend a standard HCV briefing in accordance with HACP policies in Part I of Chapter 5 of this administrative plan. FUP youth will be briefed individually. HACP will provide all aspects of the written and oral briefing

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as outlined in Part I of Chapter 5 but will also provide an explanation of the required items listed above, as well as discussing supportive services offered by EHSD.

For both FUP youth and FUP families, vouchers will be issued in accordance with HACP policies in Chapter 5 Part II, except that HACP will consider one additional 30-day extension beyond the first automatic extension for any reason, not just those listed in the policy in Section 5-II.E.

Once the family or youth locate a unit, the PHA conducts all other processes relating to voucher issuance and administration per HCV program regulations and the PHA's policies (including, but not limited to: ~~HQS inspection~~NSPIRE inspections, determination of rent reasonableness, etc.).

19-I.I. TERMINATION OF ASSISTANCE

General Requirements

With the exception of terminations of assistance for FUP youth after the statutorily required time period, terminations of FUP assistance are handled in the same way as the regular HCV program. Termination of a FUP voucher must be consistent with regulations for termination in 24 CFR Part 982, Subpart L and be in compliance with PHA policies (Chapter 12). If the person who qualifies for the FUP voucher passes away, the family retains the FUP voucher. In the case of a FUP-youth voucher, assistance will terminate after the statutorily required time period, even if the FUP-eligible youth is no longer included in the household. If the person who qualifies for the FUP voucher moves, the remaining family members may keep the FUP voucher based on PHA policy (see administrative plan, Section 3-I.C., Family Breakup and Remaining Member of Tenant Family).

FUP Family Vouchers

If parents lose their parental rights or are separated from their children after voucher lease-up (or their children reach adulthood), the family is still eligible to keep their FUP assistance, as the regulations do not permit HCV termination for a family losing parental rights or the children reaching adulthood. However, the PHA may transfer the assistance of a FUP family voucher holder to regular HCV assistance if there are no longer children in the household.

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers, HACP will transfer the assistance of a FUP family voucher holder to regular HCV assistance if there are no longer children in the

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household and there is no prospect of any minor child being returned to the household.

If HACP has no regular HCV vouchers available at the time this determination is made, including if no vouchers are available due to lack of funding, HACP will issue the family the next available regular HCV voucher after those being issued to families residing in PBV units claiming Choice Mobility.

FUP Youth Vouchers

A PHA cannot terminate a FUP youth's assistance for noncompliance with PCWA case management, nor may the PHA terminate assistance for a FUP youth for not accepting services from the PCWA.

The PHA may not transfer the assistance of a FUP youth voucher holder to regular HCV assistance upon the expiration of the statutorily required time period. However, the PHA may issue a regular HCV to FUP youth if they were selected from the waiting list in accordance with PHA policies and may also adopt a preference for FUP youth voucher holders who are being terminated for this reason.

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers, HACP will not provide a selection preference on the PHA's HCV waiting list for FUP youth who are terminated due to the time limit on assistance.

Upon the expiration of the statutorily required time period, a FUP youth voucher holder who has children and who lacks adequate housing may qualify for a FUP family voucher provided they are referred by the PCWA as an eligible family and meet the eligibility requirements for the PHA's HCV program.

9-I.J. FUP PORTABILITY

Portability for a FUP family or youth is handled in the same way as for a regular HCV family. A PHA may not restrict or deny portability for a FUP family or youth for reasons other than those specified in the HCV program regulations, as reflected in Chapter 10 of the administrative plan.

A FUP family or youth does not have to port to a jurisdiction that administers FUP. If the receiving PHA administers the FUP voucher on behalf of the initial PHA, the voucher is still considered a FUP voucher regardless of whether the receiving PHA has a FUP program.

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If the receiving PHA absorbs the voucher, the receiving PHA may absorb the incoming port into its FUP program (if it has one) or into its regular HCV program (if the receiving PHA has vouchers available to do so) and the family or youth become regular HCV participants. In either case, when the receiving PHA absorbs the voucher, a FUP voucher becomes available to the initial PHA.

Considerations for FUP Youth Vouchers

If the voucher is a FUP youth voucher and remains such upon lease-up in the receiving PHA's jurisdiction, termination of assistance must still take place once the youth has received assistance for the statutorily required time period. If the receiving PHA is administering the FUP youth voucher on behalf of the initial PHA, the two PHAs must work together to initiate termination upon expiration of the statutorily required time period.

19-I.K. PROJECT-BASING FUP VOUCHERS [Notice PIH 2017-21; FR Notice 1/24/22]

The PHA may project-base FUP vouchers without HUD approval in accordance with Notice PIH 2017-21, FR Notice 1/24/22, and all statutory and regulatory requirements for the PBV program. Project-based FUP vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A. The PHA may limit PBVs to one category of FUP-eligible participants (families or youth) or a combination of the two.

While FUP vouchers can be used for either families or youth, a PBV unit may only be counted towards the PHA's 10 percent exception authority under the program cap and the project's income-mixing requirement if the FUP PBV assistance is provided on behalf of an eligible youth. The PHA must amend its administrative plan to include the limitation of these FUP PBV units to eligible youth.

HACP Policy:

HACP does not participate in this program. However, if awarded FUP Vouchers, HACP will not project based FUP vouchers. All FUP vouchers will be used to provide tenant-based assistance.

PART II: FOSTER YOUTH TO INDEPENDENCE INITIATIVE

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19-II.A. PROGRAM OVERVIEW [Notice PIH 2020-28; Notice PIH ~~2021-26~~2023-04; FR Notice 1/24/22]

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The Foster Youth to Independence (FYI) initiative was announced in 2018. The FYI initiative allows PHAs who partner with a Public Child Welfare Agency (PCWA) to request targeted HCVs to serve eligible youth with a history of child welfare involvement that are homeless or at risk of being homeless. Rental assistance and supportive services are provided to qualified youth for a period of between 36 and 60 months.

Funding is available either competitively through an FYI NOFA or noncompetitively on a rolling basis in accordance with the application requirements outlined in Notice PIH 2020-28, ~~Notice PIH 2021-26~~, or Notice PIH ~~2021-26~~2023-04, as applicable. Under the noncompetitive process, PHAs are limited to 25 vouchers in a fiscal year with the ability to request additional vouchers ~~for those PHAs with 90 percent or greater utilization or utilization of its FUP and/or FYI vouchers, as applicable. Where the PHA has a combined FYI and/or FUP size of no more than 10 vouchers, the PHA may request FYI vouchers with at least 50 percent utilization of its FUP and/or FYI vouchers. Where the PHA has a combined FYI and/or FUP size of 11 or more vouchers, the PHA may request FYI vouchers with 90 percent or greater utilization of its FUP and/or FYI vouchers.~~ For competitive awards, the number of vouchers is dependent on PHA program size and need.

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19-II.B. PARTNERING AGENCIES [Notice PIH ~~2021-26~~2023-04; FYI Updates and Partnering Opportunities Webinar]

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Public Child Welfare Agency (PCWA)

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The PHA must enter into a partnership agreement with a PCWA in the PHA's jurisdiction in the form of a Memorandum of Understanding (MOU) or letter of intent. The PCWA is responsible for identifying and referring eligible youth to the PHA and providing or securing a commitment for the provision of supportive services once youth are admitted to the program.

HACP Policy:

When approved, HACP will implement a Foster Youth to Independence (FYI) program in partnership with the Contra Costa County Employment and Housing Services Department (EHSD).

The PCWA is responsible for:

- Identifying FYI-eligible youth.
- Developing a system of prioritization based on the level of need of the youth and the appropriateness of intervention.

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- Providing a written certification to the PHA that the youth is eligible; and
- Providing or securing supportive services for 36 months.

Continuum of Care (CoC) and Other Partners

HUD strongly encourages PHAs to add other partners into the partnership agreement with the PCWA such as state, local, philanthropic, faith-based organizations, and the CoC, or a CoC recipient it designates.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, HACP has not partnered with any other agencies or organizations for FYI-eligible youth to date.

19-II.C. YOUTH ELIGIBILITY CRITERIA [Notice PIH ~~2021-26~~2023-04; FYI Q&As; FYI FAQs]

The PCWA is responsible for certifying that the youth has prior qualifying foster care involvement. As determined by the PCWA, eligible youth:

- Are at least 18 years of age and not more than 24 years of age (have not yet reached their 25th birthday); - Youth must be no more than 24 years of age at the time the PCWA certifies them as eligible and at the time of HAP contract execution.
- Have left foster care or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act; - Placements can include, but are not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, childcare institutions, and pre-adoptive homes in accordance with 24 CFR 5.576;
- Are homeless or at risk of becoming homeless at age 16 and older; - *At risk of being homeless* is fully defined at 24 CFR 576.2. o This includes a person that is exiting a publicly funded institution, or system of care (such as a healthcare facility, a mental health facility, foster care or other youth facility, or correction program or institution). Therefore, youth being discharged from an institution may be eligible for an FYI voucher [FYI FAQs].

Eligibility is not limited to single persons. For example, pregnant and/or parenting youth are eligible to receive assistance assuming they otherwise meet eligibility requirements.

19-II.D. SUPPORTIVE SERVICES [Notice PIH ~~2021-26~~2023-04; FYI Updates and Partnering Opportunities Webinar; FYI Q&As]

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Supportive services may be provided by the PHA, PCWA or a third party. The PCWA must provide or secure a commitment to provide supportive services for participating youth for the period of time defined in the NOFA/O for which the funding was made available. At a minimum, the following supportive services must be offered:

- Basic life skills information/counseling on money management, use of credit, housekeeping, proper nutrition/meal preparation, and access to health care (e.g., doctors, medication, and mental and behavioral health services);
- Counseling on compliance with rental lease requirements and with HCV program participant requirements, including assistance/referrals for assistance on security deposits, utility hook-up fees, and utility deposits.
- Providing such assurances to owners of rental property as are reasonable and necessary to assist eligible youth to rent a unit with a voucher.
- Job preparation and attainment counseling (where to look/how to apply, dress, grooming, relationships with supervisory personnel, etc.); and
- Educational and career advancement counseling regarding attainment of general equivalency diploma (GED) or attendance/financing of education at a technical school, trade school, or college, including successful work ethic and attitude ~~models~~.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, Additional supportive services will not be offered. Since participation in supportive services is optional, but strongly encouraged, an FYI participant may decline supportive service.

19-II.E. REFERRALS AND WAITING LIST MANAGEMENT [Notice PIH ~~2021-26~~2023-04; FYI Updates and Partnering Opportunities Webinar FYI FAQs]

Referrals

The PCWA is responsible for certifying that the youth has prior qualifying foster care involvement. Once the PCWA sends the PHA the referral certifying the youth is program-eligible, the PHA determines HCV eligibility.

The PCWA must have a system for identifying eligible youth within the agency's caseload and reviewing referrals from other partners, as applicable. The PCWA must also have a system for prioritization of referrals to ensure that youth are

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prioritized for an FYI voucher based upon their level of need and appropriateness of the intervention.

Referrals may come from other organizations in the community who work with the population, but the PCWA must certify that the youth meets eligibility requirements, unless the PCWA has vested another organization with this authority.

The PHA is not required to maintain full documentation that demonstrates the youth's eligibility as determined by the PCWA but should keep the referral or certification from the PCWA. The PCWA is not required to provide the PHA with HCV eligibility documents.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, HACP and EHSD have identified staff positions to serve as lead FYI liaisons. These positions will be responsible for transmission and acceptance of referrals. EHSD must commit sufficient staff and resources to ensure eligible youths are identified, prioritized, and determined eligible in a timely manner.

When vouchers are available, the HACP liaison responsible for acceptance of referrals will contact the EHSD liaison via email indicating the number of vouchers available and requesting an appropriate number of referrals. No more than 10 business days from the date EHSD receives this notification, the EHSD liaison must provide HACP with a list of eligible referrals, a completed release form, and a written certification for each referral indicating the referral is eligible. The list will include the name, address, and contact phone number for each adult individual who is being referred.

HACP will maintain a copy of each certification from EHSD in the participant's file along with other eligibility paperwork.

Waiting List Placement [Notice PIH ~~2021-26~~2023-04 and FYI FAQs]

The PHA must use the HCV waiting list for the FYI program. Youth already on the HCV program may not be transferred to an FYI voucher since they are not homeless or at-risk of homelessness.

Once a referral is made, the PHA must compare the list of PCWA referrals to its HCV waiting list to determine if any applicants on the PCWA's referral list are already on the PHA's HCV waiting list. Applicants already on the PHA's HCV waiting list retain the order of their position on the list. Applicants not already on the PHA's HCV waiting list must be placed on the HCV waiting list.

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If the PHA's HCV waiting list is closed, the PHA must open its HCV waiting list in order to accept new referrals. The PHA may reopen the waiting list to accept an FYI eligible youth without opening the waiting list for other applicants; however, the requirements at 24 CFR 982.206 for giving public notice when opening and closing the waiting list apply (see section 4-II.C., Opening and Closing the Waiting List of this administrative plan).

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, within 10 business days of receiving the referral from EHSD, HACP will review the HCV waiting list and will send EHSD a list confirming whether or not referrals are on the waiting list.

- Referrals who are already on the list will retain their position and the list will be notated to indicate the applicant is FYI-eligible.
- For those referrals not already on the waiting list, HACP will work with EHSD to ensure they receive and successfully complete a pre-application or application, as applicable. Once the pre-application or application has been completed, HACP will place the referral on the HCV waiting list with the date and time of the original referral and an indication that the referral is FYI-eligible.

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Waiting List Selection

The PHA selects eligible youths based on the PHA's regular HCV waiting list selection policies in Chapter 4, including any preferences that may apply.

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19-II.F. PHA HCV ELIGIBILITY DETERMINATION [FYI FAQs]

Once an eligible youth is selected from the HCV waiting list, the PHA must determine whether the youth meets HCV program eligibility requirements. Applicants must be eligible under both FYI eligibility requirements and HCV eligibility requirements as outlined in Chapter 3 of this policy. The PCWA may, but is not obligated to, provide information to the PHA on the youth's criminal history.

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HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, HACP will run its own criminal background checks on FYI-eligible families pursuant to policies in this plan for HCV program participants.

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HACP will consider the information in making its eligibility determination in accordance with HACP's policies in Chapter 3, Part III.

Additional Eligibility Factors

Youth must be no more than 24 years old both at the time of PCWA certification and at the time of the HAP execution. If a youth is 24 at the time of PCWA certification but will turn 25 before the HAP contract is executed, the youth is no longer eligible for a FYI voucher.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, Any applicant that does not meet the eligibility criteria for the HCV program listed in Chapter 3 or any eligibility criteria listed in this section will be notified by HACP in writing following policies in Section 3-III.F, including stating the reasons the applicant was found ineligible and providing an opportunity for an informal review.

19-II.G. LEASE UP [FR Notice 1/24/22]

Once the PHA determines that the family or youth meets HCV eligibility requirements, the youth will be issued an FYI voucher in accordance with PHA policies.

During the family briefing, PHAs must inform the FYI voucher holder of:

- The extension of assistance provisions and requirements;
 - The availability of the FSS program and offer them an FSS slot, if available, or offer to place them on the FSS waiting list (provided the PHA has an FSS program); and
 - The supportive services available to them, the existence of any other programs or services, and their eligibility for such programs and services.
- However, participation in supportive services cannot be required as a condition of receiving FYI assistance.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, Eligible applicants will be notified by HACP in writing following policies in Section 3-III.F. of this policy. FYI youth will be briefed individually. HACP will provide all aspects of the written and oral briefing as outlined in Part I of Chapter 5.

Vouchers will be issued in accordance with HACP policies in Chapter 5, Part II, except that HACP will consider one additional 30-day extension beyond the first automatic extension for any reason, not just those listed in the policy in Section 5-II.E.

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Once the youth locates a unit, the PHA conducts all other processes relating to voucher issuance and administration per HCV program regulations and the PHA policy in Chapter 9.

Should a youth fail to use the voucher, the PHA may issue the voucher to another eligible youth if one has been identified [Notice PIH ~~2021-26~~2023-04].

Turnover [FYI FAQs Notice PIH 2023-04]

~~For PHAs awarded Awards of FYI Tenant Protection Vouchers (TPVs) under Notice PIH 2018-20 where the recipient of the FYI TPV leaves the program, the PHA may request an FYI voucher continue to be administered under the requirements of Notice PIH 2021-26.~~

~~For PHAs awarded FYI vouchers under Notices PIH 2020-28 and PIH 2021-26, where the recipient of the FYI voucher leaves the program, the PHA must continue to use the FYI voucher for eligible youth upon 2019-20. This includes turnover. Where there are more eligible youth than available FYI turnover vouchers, the PHA may request an FYI voucher under the requirements of and the requirement to inform HUD should a youth not use a voucher or leave the program. For example, FYI TPVs awarded under Notice PIH 2021-26. If another eligible 2019-20 "sunset" when a youth is not available, leaves the program. This means that the PHA must notify HUD, and HUD will reduce the PHA's HCV cannot reissue FYI TPV assistance to account for the removal of the FYI assistance from the PHA's HCV baseline. issued under that notice to another youth when an initial youth exits the HCV program. HUD does not have the authority to allow the voucher to be used for a youth other than the one identified in the request.~~

19-II.H. MAXIMUM ASSISTANCE PERIOD [Notice PIH ~~2021-26~~2023-04, and FYI FAQs; FR Notice 1/24/22]

Vouchers are limited by statute to a total of between 36 months and 60 months of housing assistance. At the end of the statutory time period, assistance must be terminated. However, any period of time for which no subsidy (HAP) is being paid on behalf of the youth does not count toward the limitation. It is not permissible to reissue another FYI TPV to the same youth upon expiration of their FYI assistance.

Participants do not "age out" of the program. A participant may continue with the program until they have received the period of assistance for which they are eligible. Age limits are only applied for entry into the program.

Extension of Assistance

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FYI voucher holders who first leased or lease a unit after December 27, 2020, may be eligible for an extension of assistance up to 24 months beyond the 36-month time limit (for a total of 60 months of assistance).

While FYI voucher holders cannot be required to participate in the Family Self-Sufficiency (FSS) program as a condition of receipt of assistance, an eligible youth who participates in the FSS program and is in compliance with the applicable terms and conditions of the program is entitled to receive assistance for up to an additional 24 months. A FYI voucher holders must accept an FSS slot if it is offered to them prior to the 36-month mark in order to receive an extension of assistance (unless the youth meets one of the statutory exceptions described below).

Statutory Exceptions

FYI voucher holders will be entitled to receive an extension of assistance for up to 24 months beyond the 36-month time limit without participating in the PHA's FSS program if they certify that they meet one of the exceptions below:

- The FYI voucher holder is a parent or other household member responsible for the care of a dependent child under the age of six or for the care of an incapacitated person.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, HACP defines *incapacitated person* as a person who is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act. HACP will apply this exception in a manner that provides extensions of FYI assistance to the broadest population possible consistent with the statutory requirements.

The FYI voucher holder will be required to self-certify that they meet this exception on an HACP-provided form. This certification is the only documentation that the FYI voucher holder must submit.

The child or incapacitated person is not required to reside in the household in order for the FYI voucher holder to certify they meet this exception. For example, a child in a joint custody arrangement under the age of six who resides in the household only part time may qualify the FYI voucher holder for this exception.

- The FYI voucher holder is a person who is regularly and actively participating in a drug addiction or alcohol treatment and rehabilitation program.

HACP Policy:

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HACP does not participate in this program. However, if awarded FYI Vouchers, HACP will define *regular and active participation* in a manner that provides extensions of FYI voucher holder assistance to the broadest population possible consistent with the statutory requirements.

The FYI voucher holder will be required to self-certify that they meet this exception on an HACP-provided form. This certification is the only documentation that the FYI voucher holder must submit.

- The FYI voucher holder is a person who is incapable of complying with the requirement to participate in a FSS program as described above or engage in education, workforce development, or employment activities as described below, as applicable, due to a documented medical condition.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, HACP will apply this requirement in a manner that provides extensions of FYI voucher holder assistance to the broadest population possible consistent with statutory requirements.

The FYI voucher holder will be required to self-certify that they meet this exception on an HACP-provided form. This certification is the only documentation that the FYI voucher holder must submit.

An FYI voucher holder that meets one of the above exceptions must still be offered an opportunity to enroll in the PHA's FSS program (if it is available to them) and receive any supportive services available to FYI voucher holders. An FYI voucher holder may choose to participate in an FSS program or engage in education, workforce development, or employment activities, even if they meet one of the above statutory exceptions.

Education, Workforce Development, or Employment Activities

If a PHA that carries out an FSS program is unable to offer a FYI voucher holder an FSS slot during their first 36 months of receiving FYI assistance, the FYI voucher holder is considered to have been "unable to enroll" in the program and may have their voucher extended by meeting the education, workforce development, or employment criteria described below:

- The FYI voucher holder was engaged in obtaining a recognized postsecondary credential or a secondary school diploma or its recognized equivalent.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, HACP will use the definitions of *recognized postsecondary*

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credential and secondary school diploma or its recognized equivalent under the Workforce Innovation and Opportunity Act (WIOA). WIOA defines a *recognized postsecondary credential* as a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the state involved or federal government, or an associate or baccalaureate degree (29 U.S.C. 3102). Examples of a recognized postsecondary credential include, but are not limited to, an associate's degree, bachelor's degree, occupational licensure, or occupational certification (see U.S. Department of Labor, Training and Employment Guidance Letter No. 10–16, Change 1). For the purpose of WIOA, the U.S. Department of Labor defines a *secondary school diploma or its recognized equivalent* as a secondary school diploma (or alternate diploma) that is recognized by a state and that is included for accountability purposes under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the “Every Student Succeeds” Act (ESSA). A secondary school equivalency certification signifies that a student has completed the requirement for a high school education. Examples of a secondary school diploma or its recognized equivalent include, but are not limited to, obtaining certification of attaining passing scores on a state-recognized high school equivalency test, earning a secondary school diploma or state-recognized equivalent, or obtaining certification of passing a state-recognized competency-based assessment.

- The FYI voucher holder was enrolled in an *institution of higher education*, as such term is defined in section 101(a) of the Higher Education Act of 1865 (20 U.S.C. 1001(a)) or an institution that meets the definition of a *proprietary institution of higher education* or a *postsecondary vocational institution* under sections 102(b)(1) and (c)(1) of the Higher Education Act of 1865 (20 U.S.C. 1002(b)(1) and (c)(1)), respectively.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, the FYI voucher holder must be enrolled in education activities on at least a half-time basis, as defined by the institution which they attend. However, HACP may make exceptions to this requirement if the FYI voucher holder is unable to enroll in a sufficient number of classes due to a lack of course offerings by the educational institution where they are enrolled.

- The FYI voucher holder was participating in a career pathway, as such term is defined in Section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).
- The FYI voucher holder was employed.

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HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers, HACP will consider the FYI voucher holder to be employed if they work a minimum of 20 hours per week. HACP may make exceptions to this requirement if the FYI voucher holder's hours are reduced due to circumstances beyond their control or the FYI voucher holder must temporarily reduce their work hours due to a verified family emergency.

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FSS Enrollment at 24 Months

If the FYI voucher holder has not been provided an opportunity to enroll in the FSS program during the first 24 months of FYI assistance, HUD encourages the PHA to remind the FYI voucher holder at the 24-month reexamination of the education, workforce development, and employment requirements described above so that they have enough time to meet these requirements prior to the expiration of the 36-month time period for FYI assistance.

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HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers and administer FSS, If the FYI voucher holder has not been provided an opportunity to enroll in the FSS program during the first 24 months of FYI assistance, HACP will make every effort to remind the FYI voucher holder at their second regular ~~reexam~~reexamination of the education, workforce development, and employment requirements described above.

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FSS Enrollment Between 36 and 48 Months

If an FSS slot becomes available between the 36-month and 48-month mark:

- The PHA must offer the slot to an FYI voucher holder who had their voucher extended based on meeting the education, workforce development, or employment requirement listed above, or one of the statutory exceptions listed above (even if the FYI voucher holder previously declined an FSS slot because they met one of the statutory exceptions).
- The PHA must work with the FYI voucher holder to determine whether enrollment in FSS is feasible and in their best interest given any education, workforce development, or employment activities that the FYI voucher holder is engaged in and any statutory exceptions that apply to the FYI voucher holder, as well as the remaining time on their voucher.
 - If the FYI voucher holder accepts the FSS slot, the PHA must work with them to establish Contract of Participation goals and an Individual Training and Services Plan (ITSP) that can be accomplished within the time period left on the voucher.

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If the FYI voucher holder is offered an FSS slot prior to the 36-month mark, the FYI voucher holder:

- Will be required to enroll in the FSS program in order to receive an extension of assistance at the end of the 36-month time period (unless they meet one of the statutory exceptions described above).
- Will not be considered to have been “unable to enroll” in the FSS program, and as a result, will not be eligible to receive an extension of assistance based on meeting the education, workforce development, or employment requirements described above.

FSS Enrollment After 48 Months

The PHA may, but is not required, to offer an FYI voucher holder an FSS slot that becomes available between the 48-month mark and the 60-month mark, since the FYI voucher holder will have already received their second and final extension.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers and administer FSS -if an FSS slot becomes available between the 48 and 60-month marks, HACP will not offer the FSS slot to an FYI voucher holder.

Extensions of Assistance

At the 36-month and 48-month reexamination, the PHA must extend FYI assistance if the FYI voucher holder is participating in and in compliance with the FSS program as long as the FYI voucher holder is still eligible for the HCV program.

In any case, the FYI voucher holder cannot receive more than a total of 60 months of FYI assistance even if the FSS Contract of Participation time period extends beyond the voucher 60- month mark.

No FSS Program or Unable to Enroll in FSS

If a PHA does not carry out an FSS program or the FYI voucher holder has been unable to enroll in the program during the first 36 months of receiving FYI assistance, the FYI voucher holder is entitled to receive an extension of assistance for up to two successive 12-month periods beyond the 36-month time limit provided that the FYI voucher holder engaged in at least one of the education, workforce development, or employment activities described above for not less than nine months of the 12-month period preceding each extension. In order to meet the nine months out of the preceding 12 months requirement, the FYI voucher holder may have engaged in one of the education, workforce

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development, or employment activities described above or a combination of these activities.

Verification Prior to Annual Reexam

In order to provide an extension of assistance, the PHA must verify compliance with the above requirements at the end of the 36-month time period and the 48-month time periods. The PHA does not need to verify compliance with these requirements at the end of the 60-month time period since the maximum length of assistance is 60 months.

To verify compliance with the education, workforce development, or employment requirement or one of the statutory exceptions, the PHA must provide the FYI voucher holder written notification informing them that they may receive an extension of their FYI assistance and providing instructions on how the FYI voucher holder may demonstrate that they meet one of these conditions. This notification must be provided sufficiently in advance of the end of the 36-month or 48-month time periods, as applicable, to allow the FYI voucher holder to demonstrate that they meet the education, workforce development, or employment requirement, or one of the statutory exceptions, and for the PHA to conduct an annual reexamination prior to the expiration of the FYI assistance.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers and administer FSS HACP will verify compliance with the education, workforce development, or employment requirement, or one of the statutory exceptions, at the end of the 36-month and 48-month time periods prior to the FYI voucher holder's scheduled annual reexamination. HACP will not verify compliance at the end of the 60-month time period.

HACP will provide each FYI voucher holder on HACP's program with a written notification informing them that they may receive an extension of their FYI assistance if they meet conditions outlined in this chapter and providing them with instructions on how they may demonstrate compliance at least 60 days prior to their scheduled annual ~~reexam~~reexamination date. When necessary, HACP will provide this notification in a format accessible to FYI voucher holders with disabilities and in a translated format for FYI voucher holders with limited English proficiency in accordance with Chapter 2.

HACP will use the following verification methods to verify an FYI voucher holder's eligibility for voucher extensions:

- To verify compliance with the FSS requirement, HACP will examine its records to confirm, or obtain confirmation from the HACP's FSS program

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staff, that the FYI participant is in compliance with FSS program requirements and has not been terminated from the FSS program.

- To meet the education, workforce development, or employment requirement, HACP will verify that the FYI voucher holder was engaged in at least one education, workforce development, or employment activity for at least nine months of the 12-month period immediately preceding the end of the 36-month or 48-month time period, as applicable.

- Due to the timing of when HACP verifies compliance and conducts the annual reexamination, the FYI voucher holder may have not yet met the nine-month requirement but may be able to demonstrate that they will meet the nine-month requirement as of the end of the 36-month or 48-month time period. In such cases, the FYI voucher holder will still be considered to have met the requirements.

In order for the FYI voucher holder to meet one of the statutory exceptions described above, the FYI voucher holder must submit a certification to HACP that they meet one of these exceptions. This certification is the only documentation that the FYI voucher holder must submit in order to demonstrate that they meet one of the statutory exceptions.

An FYI voucher holder who received an extension of voucher assistance at the end of the 36-month time period based on meeting one of the conditions described in this chapter does not have to meet the same conditions when they reach the end of the 48-month time period. The FYI voucher holder may demonstrate that they meet a different condition in order to receive an extension of their assistance.

If the PHA determines that the FYI voucher holder meets one of the statutory conditions, the PHA would then conduct an annual reexamination. If the annual reexamination determines that the FYI voucher holder is still eligible for the HCV program, the PHA must provide the FYI voucher holder the extension of voucher assistance.

Termination of Assistance for Failure to Meet Conditions

Failure of the FYI voucher holder to meet one of the above conditions will only impact their ability to receive subsequent extensions of assistance. It will not serve as a basis for terminating the FYI assistance prior to the annual reexam. If the FYI voucher holder does not meet any of the statutory conditions described in in this chapter, the youth is subject to the statutory time limit of 36 months or the time limit of any extension that the youth has already received, and the FYI voucher must be terminated once they reach this time limit. The calculation of the time limit begins from the date the first HAP contract is signed (for tenant-based vouchers) or from the date the FYI voucher holder entered into the initial lease

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agreement (for project-based vouchers). The number of months is calculated based on the number of months that HAP subsidy is being paid on behalf of the FYI voucher holder, not the number of months that they are in the FYI program. Prior to termination, the PHA must offer the FYI voucher holder the opportunity to request an informal hearing, in accordance with Chapter 16.

19-II.I. TERMINATION OF ASSISTANCE [FYI FAQs]

Termination of a FYI voucher is handled in the same way as with any HCV; therefore, termination of a FYI voucher must be consistent with HCV regulations at 24 CFR Part 982, Subpart L and PHA policies in Chapter 12. Given the statutory time limit that requires FYI vouchers to sunset, a PHA must terminate the youth's assistance once the limit on assistance has expired.

A PHA cannot terminate a FYI youth's assistance for noncompliance with PCWA case management, nor may the PHA terminate assistance for a FYI youth for not accepting services from the PCWA.

The PHA may not transfer the assistance of FYI voucher holders to regular HCV assistance upon the expiration of the limit on assistance. However, the PHA may issue a regular HCV to FYI voucher holders if they were selected from the waiting list in accordance with PHA policies. The PHA may also adopt a waiting list preference for FYI voucher holders who are being terminated for this reason.

HACP will not provide a selection preference on the PHA's HCV waiting list for FYI voucher holders who are terminated due to the time limit on assistance.

19-II.J. PORTABILITY [FYI FAQs]

Portability for an FYI youth is handled in the same way as for a regular HCV family. A PHA may not restrict or deny portability for an FYI youth for reasons other than those specified in the HCV program regulations, as reflected in Chapter 10 of the administrative plan.

An FYI youth does not have to port to a jurisdiction that administers FYI vouchers.

If the receiving PHA absorbs the voucher, the PHA may absorb the youth into its regular HCV program if it has vouchers available to do so. If the receiving PHA absorbs the youth into its regular HCV program, that youth becomes a regular HCV participant with none of the limitations of an FYI voucher.

The initial and receiving PHA must work together to initiate termination of assistance upon expiration of the time limit on assistance.

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19-II.K. PROJECT-BASING FYI VOUCHERS [FYI FAQs; FR Notice 1/24/22; Notice PIH 2024-03]

Notice PIH 2024-03]

The PHA may PHAs that have initiated the selection process to project-base certain FYI and/or FUP vouchers without HUD approval may be eligible to project-base FYI and FUP units formally identified for project basing in accordance with all applicable PBV regulations and PHA policies in Chapter 17. This includes FYI vouchers awarded under Notices PIH 2020-28 and, PIH 2021-26, and PIH 2023-04. Assistance awarded under Notice PIH 2018-20 is prohibited from being project-based.

HACP Policy:

HACP does not participate in this program. However, if awarded FYI Vouchers and administer FSS HACP will not project-base FYI vouchers. All FYI vouchers will be used to provide tenant-based assistance.

PART III: VETERANS AFFAIRS SUPPORTIVE HOUSING (VASH) PROGRAM

19-III.A. OVERVIEW

Since 2008, HCV program funding has provided rental assistance under a supportive housing program for homeless veterans. The Veterans Affairs Supportive Housing (VASH) program combines HCV rental assistance with case management and clinical services provided by the Department of Veterans Affairs (VA) at VA medical centers (VAMCs) and Community-Based Outpatient Clinics (CBOCs), or through a designated service provider (DSP) as approved by the VA Secretary. Eligible families are homeless veterans and their families that agree to participate in VA case management and are referred to the VAMC's partner PHA for HCV assistance. The VAMC or DSP's responsibilities include:

- Screening homeless veterans to determine whether they meet VASH program participation criteria.
- Referring homeless veterans to the PHA; - The term *homeless veteran* means a veteran who is homeless (as that term is defined in subsection (a) or (b) of Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302)). See 38 U.S.C. 2002.
- Providing appropriate treatment and supportive services to potential

VASH participants, if needed, prior to PHA issuance of a voucher.

- Providing housing search assistance to VASH participants.

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- Identifying the social service and medical needs of VASH participants, and providing or ensuring the provision of regular ongoing case management, outpatient health services, hospitalization, and other supportive services as needed throughout the veterans' participation period; and
- Maintaining records and providing information for evaluation purposes, as required by HUD and the VA.

VASH vouchers are awarded noncompetitively based on geographic need and PHA administrative performance. Eligible PHAs must be located within the jurisdiction of a VAMC and in an area of high need based on data compiled by HUD and the VA. When Congress funds a new allocation of VASH vouchers, HUD invites eligible PHAs to apply for a specified number of vouchers. Generally, the HUD-VASH program is administered in accordance with regular HCV program requirements. However, HUD is authorized to waive or specify alternative requirements to allow PHAs to effectively deliver and administer VASH assistance. Alternative requirements are established in the HUD-VASH Operating Requirements, which were originally published in the Federal Register on May 6, 2008, and updated September 27, 2021. Unless expressly waived by HUD, all regulatory requirements and HUD directives regarding the HCV program are applicable to VASH vouchers, including the use of all HUD-required contracts and other forms, and all civil rights and fair housing requirements. In addition, the PHA may request additional statutory or regulatory waivers that it determines are necessary for the effective delivery and administration of the program. The VASH program is administered in accordance with applicable Fair Housing requirements since civil rights requirements cannot be waived under the program. These include applicable authorities under 24 CFR 5.105(a) and 24 CFR 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 Americans with Disabilities Act, and the Age Discrimination Act and all PHA policies as outlined in Chapter 2 of this document.

When HUD-VASH recipients include veterans with disabilities or family members with disabilities, reasonable accommodation requirements in Part II of Chapter 2 of this policy apply.

19-III.B. REFERRALS [FR Notice 9/27/21 and HUD-VASH Qs and As]

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VAMC case managers will screen all families in accordance with VA screening criteria and refer eligible families to the PHA for determination of program eligibility and voucher issuance.

The PHA has no role in determining or verifying the veteran's eligibility under VA screening criteria, including determining the veteran's homelessness status. The PHA must accept referrals from the partnering VAMC and must maintain written documentation of referrals in VASH tenant files. Upon turnover, VASH vouchers must be issued to eligible veteran families as identified by the VAMC.

HACP Policy:

In order to expedite the screening process, HACP will provide all forms and a list of documents required for the VASH application to the VAMC. VAMC Case managers will work with veterans to fill out the forms and compile all documents prior to meeting with HACP and submitting an application. The VAMC case manager shall email copies of all documents to HACP.

HACP will performance eligibility screening within five (5) business days of receiving both a complete referral packet from the VAMC and the results of the criminal background check indicating that no member of the household is subject to a lifetime ban due to sex offender status.

19-III.C. HCV PROGRAM ELIGIBILITY [FR Notice 9/27/21]

Eligible participants are homeless veterans and their families who agree to participate in case management from the VAMC.

- A *VASH Veteran* or *veteran family* refers to either a single veteran or a veteran with a household composed of two or more related persons. It also includes one or more eligible persons living with the veteran who are determined to be important to the veteran's care or well-being.
- A veteran for the purpose of VASH is a person whose length of service meets statutory requirements, and who served in the active military, naval, or air service, was discharged or released under conditions other than dishonorable, and is eligible for VA health care.

Under VASH, PHAs do not have authority to determine family eligibility in accordance with HCV program rules and PHA policies. The only reasons for denial of assistance by the PHA are failure to meet the income eligibility requirements and/or that a family member is subject to a lifetime registration requirement under a state sex offender registration program. Under portability, the receiving PHA must also comply with these VASH screening requirements.

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Social Security Numbers: When verifying Social Security numbers (SSNs) for homeless veterans and their family members, an original document issued by a federal or state government agency, which contains the name and SSN of the individual along with other identifying information of the individual, is acceptable in accordance with Section 7-II.B. of this policy.

In the case of the homeless veteran, the PHA must 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 a Social Security card. A VA-issued identification card may also be used to verify the SSN of a homeless veteran.

Proof of Age

The DD-214 or 10-10EZ must be accepted as proof of age in lieu of birth certificates or other PHA-required documentation as outlined in Section 7-II.C. of this policy. A VA-issued identification card may also be used to verify the age of a homeless veteran.

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Photo Identification

A VA-issued identification card must be accepted in lieu of another type of government-issued photo identification. These cards also serve as verification of SSNs and date of birth.

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Income Eligibility

The PHA must determine income eligibility for VASH families in accordance with 24 CFR 982.201 and policies in Section 3-II.A. If the family is over-income based on the most recently published income limits for the family size, the family will be ineligible for HCV assistance.

While income-targeting does not apply to VASH vouchers, the PHA may include the admission of extremely low-income VASH families in its income targeting numbers for the fiscal year in which these families are admitted.

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HACP Policy:

HACP will include any extremely low-income VASH families that are admitted in its income targeting numbers for the fiscal year in which these families are admitted.

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Income targeting requirements of section 16(b) of the USHA of 1837, as well as 24 CFR 982.201(b)(2), do not apply for HUD–VASH families so that HACP 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.

The HACP will not apply income targeting requirements separate from the HUD-VASH Screening completed by the VAMC. The Screening assigns a Vulnerability score which ranks applicants based on several factors including income level, disability, chronic homelessness, family composition and other risk factors.

Screening

The PHA may not screen any potentially eligible family members or deny assistance for any grounds permitted under 24 CFR 982.552 and 982.553 with one exception: the PHAs is still required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. Accordingly, with the exception of denial for registration as a lifetime sex offender under state law and PHA policies on how sex offender screenings will be conducted, PHA policy in Sections 3-III.B. through 3-III.E. do not apply to VASH. The prohibition against screening families for anything other than lifetime sex offender status applies to all family members, not just the veteran.

If a family member is subject to lifetime registration under a state sex offender registration program, the remaining family members may be served if the family agrees to remove the sex offender from its family composition. This is true unless the family member subject to lifetime registration under a state sex offender registration program is the homeless veteran, in which case the family would be denied admission to the program [New HCV GB, *HUD-VASH*, p. 6].

Denial of Assistance [Notice PIH 2008-37]

Once a veteran is referred by the VAMC, the PHA must either issue a voucher or deny assistance. If the PHA denies assistance, it must provide the family with prompt notice of the decision and a brief statement of the reason for denial in accordance with Section 3-III.F. Like in the standard HCV program, the family must be provided with the opportunity for an informal review in accordance with policies in Section 3-III.F. In addition, a copy of the denial notice must be sent to the VAMC case manager.

19-III.D. CHANGES IN FAMILY COMPOSITION

Adding Family Members [FR Notice 9/27/21]

When adding a family member after the family has been admitted to the program, PHA policies in Section 3-II.B. apply. Other than the birth, adoption, or court-awarded custody of a child, the PHA must approve/authorize additional family members and will apply its regular screening criteria in doing so.

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Remaining Family Members [HUD-VASH Qs and As]

If the homeless veteran dies while the family is being assisted, the voucher would remain with the remaining members of the tenant family. The PHA may use one of its own regular vouchers, if available, to continue assisting this family and free up a VASH voucher for another VASH-eligible family. If a regular voucher is not available, the family would continue utilizing the VASH voucher. Once the VASH voucher turns over, however, it must go to a homeless veteran family.

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Family Break Up [HUD-VASH Qs and As]

In the case of divorce or separation, since the set-aside of VASH vouchers is for veterans, the voucher must remain with the veteran. This overrides the PHA's policies in Section 3-I.C. on how to determine who remains in the program if a family breaks up.

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19-III.E. LEASING [FR Notice 9/27/21]

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Waiting List

The PHA does not have the authority to maintain a waiting list or apply local preferences for HUD-VASH vouchers. Policies in Chapter 4 relating to applicant selection from the waiting list, local preferences, special admissions, cross-listing, and opening and closing the waiting list do not apply to VASH vouchers.

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Exception Payment Standards

To assist VASH participants in finding affordable housing, especially in competitive markets, HUD allows PHAs to establish a HUD-VASH exception payment standard. PHAs may go up to but no higher than 120 percent of the published area-wide fair market rent (FMR) or small area fair market rent (SAFMR) specifically for VASH families. PHAs who want to establish a VASH exception payment standard over 120 percent must still request a waiver from HUD through the regular waiver process outlined in Notice PIH 2018-16.

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Voucher Issuance

Unlike the standard HCV program which requires an initial voucher term of at least 60 days, VASH vouchers must have an initial search term of at least 120 days. PHA policies on extensions as outlined in Section 5-II.E. will apply.

HACP Policy:

All VASH vouchers will have an initial term of 120 calendar days. The family must submit a Request for Tenancy Approval and, where available, a proposed lease within the 120-day period unless HACP grants an extension.

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The PHA must track issuance of HCVs for families referred by the VAMC or DSP in PIC as required in Notice PIH 2011-53.

Initial Lease Term

Unlike in the standard the HCV program, VASH voucher holders may enter into an initial lease that is for less than 12 months. Accordingly, PHA policy in Section 9-I.E., Term of Assisted Tenancy, does not apply.

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Ineligible Housing [FR Notice 6/18/14]

Unlike in the standard HCV program, VASH families are 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 983.53(a)(2), which prohibit units on the physical grounds of a medical, mental, or similar public or private institution, do not apply to VASH for this purpose only. Accordingly, PHA policy in 9-I.D., Ineligible Units, does not apply for this purpose only.

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HQSNSPIRE Pre-Inspections

To expedite the leasing process, PHAs may pre-inspect available units that veterans may be interested in leasing in order to maintain a pool of eligible units. If a VASH family selects a unit that passed an HQSNSPIRE inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval (Form HUD-52517), the unit may be approved if it meets all other conditions under 24 CFR 982.305. However, the veteran must be free to select their unit and cannot be steered to these units.

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HACP Policy:

If a VASH family selects a unit that passed an initial ~~HQS~~ inspection (without intervening occupancy) within ~~90~~45 days of the date of the RTA, the unit may be approved provided that it meets all other conditions under 24 CFR 982.305. The veteran will be free to select their unit.

HACP will make every effort to fast-track the inspection process and the RTA approval process.

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19-III.F. PORTABILITY [FR Notice 9/27/21 and Notice PIH 2011-53]

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General Requirements

Portability policies under VASH depend on whether the family wants to move within or outside of the initial VA facility's catchment area (the area in which the VAMC or DSP operates). In all cases, the initial VA facility must be consulted

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prior to the move and provide written confirmation that case management will continue to be provided in the family's new location. VASH participant families may only reside in jurisdictions that are accessible to case management services, as determined by case managers at the partnering VAMC or DSP. Under VASH, 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. As a result, PHA policies in Section 10-II.B. about nonresident applicants do not apply.

If the family no longer requires case management, there are no portability restrictions. Normal portability rules apply.

Portability within the Initial VAMC or DSP's Catchment Area

A VASH family can move within the VAMC's catchment area as long as case management can still be provided, as determined by the VA. If the initial PHA's partnering VAMC will still provide the case management services, the receiving PHA must process the move in accordance with portability procedures:

- If the receiving PHA has been awarded VASH vouchers, it can choose to either bill the initial PHA or absorb the family if it has a VASH voucher available to do so. - If the PHA absorbs the family, the VAMC or DSP providing the initial case management must agree to the absorption and the transfer of case management.
- If the receiving PHA does not administer a VASH program, it must always bill the initial PHA.

Portability Outside of the Initial VAMC or DSP's 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 initial VAMC or DSP must first determine that the VASH family could be served by another VAMS or DSP that is participating in the VASH program, and the receiving PHA has an available VASH voucher.

In these cases, the family must be absorbed by the receiving PHA either as a new admission or as a portability move-in, as applicable. Upon absorption, the initial PHA's VASH voucher will be available to lease to a new VASH-eligible family, and the absorbed family will count toward the number of VASH slots awarded to the receiving PHA.

Portability Outside of the Initial VAMC or DSP's Catchment Area under VAWA

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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, or human trafficking, and who reasonably believes they are threatened with imminent harm from further violence by remaining in the unit may port prior to receiving approval from the receiving VAMC or DSP. The initial PHA must follow its emergency transfer plan (see Exhibit 16-3). PHAs may require verbal self-certification or a written request from a participant seeingseeking 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 they were to remain in the same unit or a statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the participants request for the move.

The participant must still port to a PHA that has a VASH program. If the receiving PHA does not have a VASH voucher available to lease, they may bill the initial PHA until a VASH voucher is available, at which point the porting veteran must be absorbed into the receiving PHA's program.

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19-III.G. TERMINATION OF ASSISTANCE [FR Notice 9/27/21]

With the exception of terminations for failure to receive case management, HUD has not established any alternative requirements for termination of assistance for VASH participants. However, prior to terminating VASH participants, HUD strongly encourages PHAs to exercise their discretion under 24 CFR 982.552(c)(2) as outlined in Section 12-II.D. of this policy and consider all relevant circumstances of the specific case. This includes granting reasonable accommodations for persons with disabilities, as well as considering 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.

VASH participant families may not be terminated after admission for a circumstance or activities that occurred prior to admission and were known to the PHA but could not be considered at the time of admission due to VASH program requirements. The PHA may terminate the family's assistance only for program violations that occur after the family's admission to the program.

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Cessation of Case Management

As a condition of receiving HCV rental assistance, a HUD-VASH-eligible family must receive case management services from the VAMC or DSP. A VASH participant family's assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC or DSP. However, a VAMC or DSP determination that the participant family no longer requires case management is not grounds for termination of voucher or PBV assistance. In such a case, at its option, the PHA may offer the family continued

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assistance through one of its regular vouchers. If the PHA has no voucher to offer, the family will retain its VASH voucher or PBV unit until such time as the PHA has an available voucher for the family.

VAWA [FR Notice 9/27/21]

When a veteran's family member is receiving protection under VAWA because the veteran is the perpetrator of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking the victim must continue to be assisted. Upon termination of the perpetrator's VASH assistance, the victim must be given a regular HCV if one is available, and the perpetrator's VASH voucher must be used to serve another eligible veteran family. If a regular HCV is not available, the perpetrator must be terminated from assistance and the victim will continue to use the VASH voucher.

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19-III.H. PROJECT-BASING VASH VOUCHERS

General Requirements [Notice PIH 2017-21 and FR Notice 9/27/21]

PHAs are authorized to project-base their tenant-based VASH vouchers without additional HUD review or approval in accordance with Notice PIH 2017-21 and all PBV program requirements provided that the VAMC will continue to make supportive services available. In addition, since 2010, HUD has awarded VASH vouchers specifically for project-based assistance in the form of PBV HUD-VASH set-aside vouchers. While these vouchers are excluded from the PBV program cap as long as they remain under PBV HAP contract at the designated project, all other VASH vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A. Note that VASH supportive services only need to be provided to VASH families receiving PBV assistance in the project, not all families receiving PBV assistance in the project. If a VASH family does not require or no longer requires case management, the unit continues to count as an excepted PBV unit as long as the family resides in the unit.

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If the PHA project-bases VASH vouchers, the PHA must consult with the partnering VAMC or DSP to ensure approval of the project or projects. PHAs may project-based VASH vouchers in projects alongside other PBV units and may execute a single HAP contract covering both the VASH PBVs and the other PBVs. The PHA must refer only VASH families to PBV units exclusively made available to VASH families and to PBV units funded through a HUD set-aside award.

If a VASH family is referred to the PHA and there is an available PBV unit that is not exclusively made available to VASH families, the PHA may offer to refer the family to the owner if allowable under the selection policy for that project, and the owner and PHA may amend the HAP contract to designate the PBV unit as a VASH PBV unit.

The PHA and owner may agree to amend a PBV HAP contract to redesignate a regular PBV unit as a unit specifically designated for VASH families so long as the PHA first consults with the VAMC or DSP. Additionally, the PHA and owner may agree to amend a PBV HAP contract to redesignate a unit specifically designated for VASH families as a regular PBV unit, so long as the unit is not funded through a VASH PBV set-aside award and is eligible for regular PBV (i.e., the unit is not on the grounds of a medical facility and the unit is eligible under the PHA's program and project caps).

Policies for VASH PBV units will generally follow PHA policies for the standard PBV program as listed in Chapter 17, with the exception of the policies listed below.

Failure to Participate in Case Management [FR Notice 9/27/21]

Upon notification by the VAMC or DSP of the family's failure to participate, without good cause, in case management, the PHA must provide the family a reasonable time period to vacate the unit. The PHA must terminate assistance to the family at the earlier of either the time the family vacates or the expiration of the reasonable time period given to vacate.

HACP Policy:

Upon notification by the VAMC or DSP that a VASH PBV family has failed to participate in case management without good cause, HACP will provide written notice of termination of assistance to the family and the owner within 10 business days. The family will be given 60 days from the date of the notice to move out of the unit.

HACP may make exceptions to this 60-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

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, the PHA must 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. The PHA may add the removed unit to the HAP contract after the ineligible family vacates the property.

Moves [HUD-VASH Qs and As, FR Notice 9/27/21]

When a VASH PBV family is eligible to move from its PBV unit in accordance with Section 17-VIII.C. of this policy, but there is no other comparable tenant-based rental assistance, the following procedures must be implemented:

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- If a VASH tenant-based voucher is not available at the time the family wants (and is eligible) to move, the PHA may require a family who still requires case management to wait for a VASH tenant-based voucher for a period not to exceed 180 days.
- If a VASH tenant-based voucher is still not available after that period, the family must be allowed to move with its VASH voucher. Alternatively, the PHA may allow the family to move with its VASH voucher without having to meet this 180-day period. In either case, the PHA is required to replace the assistance in the PBV unit with one of its regular vouchers, unless the PHA and owner agree to temporarily remove the unit from the HAP contract; and
- If a VASH veteran is determined to no longer require case management, the PHA must allow the family to move with the first available tenant-based voucher if not VASH voucher is immediately available and cannot require the family to wait for a VASH voucher to become available.

PART IV: MAINSTREAM VOUCHER PROGRAM

19-IV.A. PROGRAM OVERVIEW [Notice PIH 2020-01]

Mainstream vouchers assist non-elderly persons with disabilities and their families in the form of either project-based or tenant-based voucher assistance. Aside from separate funding appropriations and serving a specific population, Mainstream vouchers follow the same program requirements as standard vouchers. The PHA does not have special authority to treat families that receive a Mainstream voucher differently from other applicants and participants. For example, the PHA cannot apply different payment standards, establish conditions for allowing portability, or apply different screening criteria to Mainstream families.

The Mainstream voucher program, (previously referred to as the Mainstream 5-Year program or the Section 811 voucher program) was originally authorized under the National Affordable Housing Act of 1890. Mainstream vouchers operated separately from the regular HCV program until the passage of the Frank Melville Supportive Housing Investment Act of 2010. Funding for Mainstream voucher renewals and administrative fees was first made available in 2012. In 2017 and 2018, incremental vouchers were made available for the first time since the Melville Act (in addition to renewals and administrative fees), and PHAs were invited to apply for a competitive award of Mainstream vouchers under the FY17 and FY18 NOFAs. In 2020, Notice PIH 2020-22 provided an opportunity for any PHA administering an HCV program to apply for Mainstream vouchers noncompetitively, while Notice PIH 2020-09 authorized an increase in

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Mainstream voucher units and budget authority for those PHAs already awarded Mainstream vouchers under the FY17 and FY18 NOFAs.

Funds for Mainstream vouchers may be recaptured and reallocated if the PHA does not comply with all program requirements or fails to maintain a utilization rate of 80 percent for the PHA's Mainstream vouchers.

19-IV.B. ELIGIBLE POPULATION [Notice PIH 2020-01 and Notice PIH 2020-22]

All Mainstream vouchers must be used to serve non-elderly persons with disabilities and their families, defined as any family that includes a person with disabilities who is at least 18 years old and not yet 62 years old as of the effective date of the initial HAP contract. The eligible disabled household member does not need to be the head of household.

The definition of person with disabilities for purposes of Mainstream vouchers is the statutory definition under section 3(b)(3)(E) of the 1837 Act, which is the same as is used for allowances and deductions in the HCV program and is provided in Exhibit 3-1 of this policy.

Existing families receiving Mainstream vouchers, where the eligible family member is now age 62 or older, will not "age out" of the program as long as the family was eligible on the day it was first assisted under a HAP contract.

The PHA may not implement eligibility screening criteria for Mainstream vouchers that is different from that of the regular HCV program.

19-IV.C. PARTNERSHIP AND SUPPORTIVE SERVICES [Notice PIH 2020-01]

PHAs are encouraged but not required to establish formal and informal partnerships with a variety of organizations that assist persons with disabilities to help ensure eligible participants find and maintain stable housing.

HACP Policy:

HACPAC does not participate in this program. However, if awarded **Mainstream Vouchers**, HACP will implement a Mainstream program in partnership with the Department of Health, Housing and Homeless Services (H3) and the Housing Consortium of the East Bay (HCEB).

19-IV.D. WAITING LIST ADMINISTRATION

General Waiting List Requirements [Notice PIH 2020-01 and Mainstream Voucher Basics Webinar, 10/15/20]

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PHAs must not have a separate waiting list for Mainstream voucher assistance since the PHA is required by the regulations to maintain one waiting list for tenant-based assistance [24 CFR 982.204(f)]. All PHA policies on opening, closing, and updating the waiting list, as well as waiting list preferences in Chapter 4, apply to the Mainstream program.

When the PHA is awarded Mainstream vouchers, these vouchers must be used for new admissions to the PHA's program from the waiting list. The PHA must lease these vouchers by pulling the first Mainstream-eligible family from its tenant-based waiting list. PHAs are not permitted to reassign existing participants to the program in order to make regular tenant-based vouchers available. Further, the PHA may not skip over Mainstream-eligible families on the waiting list because the PHA is serving the required number of Mainstream families. Upon turnover, vouchers must be provided to Mainstream-eligible families. If a Mainstream turnover voucher becomes available, the PHA must determine if the families at the top of the waiting list qualify under program requirements.

Admission Preferences [Notice PIH 2020-01; FY17 Mainstream NOFA; FY18 Mainstream NOFA]

If the PHA claimed points for a preference in a NOFA application for Mainstream vouchers, the PHA must adopt a preference for at least one of the targeted groups identified in the NOFA.

HACP Policy:

HACP does not participate in this program. However, if awarded Mainstream Vouchers, HACP has not claimed a preference for a targeted group as part of an application for Mainstream vouchers under a NOFA. If funded, HACP will offer the following preference:

- **Mainstream (250 Points).** A preference for non-elderly persons with disabilities transitioning out of institutional and other segregated settings, at serious risk of institutionalization, homeless, at risk of becoming homeless or previously experienced homelessness and is currently a client in permanent supportive housing or a rapid rehousing project. Families on the HCV waiting list shall have first priority for the Mainstream vouchers and thereafter a separate waiting list for Mainstream eligible households shall be maintained to include referrals from the Housing Consortium of the East Bay and the Contra Costa County Health, Housing and Human Services department who are partners with HACP in the Mainstream voucher program.

19-IV.E. PORTABILITY [Notice PIH 2020-01 and Mainstream Voucher Basics Webinar, 10/15/20]

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Mainstream voucher participants are eligible for portability under standard portability rules and all PHA policies regarding portability in Chapter 10, Part II apply to Mainstream families.

The following special considerations for Mainstream vouchers apply under portability:

- If the receiving PHA has a Mainstream voucher available, the participant may remain a Mainstream participant. - If the receiving PHA chooses to bill the initial PHA, then the voucher will remain a Mainstream voucher.
- If the receiving PHA chooses to absorb the voucher, the voucher will be considered a regular voucher, or a Mainstream voucher if the receiving PHA has a Mainstream voucher available, and the Mainstream voucher at the initial PHA will be freed up to lease to another Mainstream-eligible family.
- If the receiving PHA does not have a Mainstream voucher available, the participant may receive a regular voucher.

19-IV.F. PROJECT-BASING MAINSTREAM VOUCHERS [FY18 Mainstream Voucher NOFA Q&A]

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The PHA may project-base Mainstream vouchers in accordance with all applicable PBV regulations and PHA policies in Chapter 17. PHAs are responsible for ensuring that, in addition to complying with project-based voucher program requirements, the project complies with all applicable federal nondiscrimination and civil rights statutes and requirements. This includes, but is not limited to, Section 504 of the Rehabilitation Act (Section 504), Titles II or III of the Americans with Disabilities (ADA), and the Fair Housing Act and their implementing regulations at 24 CFR Part 8; 28 CFR Parts 35 and 36; and 24 CFR Part 100. Mainstream vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A.

TEMPORARY POLICY SUPPLEMENT

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-18.

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. Based on criteria outlined in the notice, HUD notified eligible PHAs of the number of EHVs allocated to their agency, and PHAs were able to accept or decline the invitation to participate in the program.

PHAs may not project-base EHVs; EHVs are exclusively tenant-based assistance.

All applicable nondiscrimination and equal opportunity requirements apply to the EHV program, including requirements that the PHA grant reasonable accommodations to persons with disabilities, effectively communicate with persons with disabilities, and ensure meaningful

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access for persons with limited English proficiency (LEP).

This chapter describes HUD regulations and PHA policies for administering EHV. The policies outlined in this chapter are organized into seven 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

Except as addressed by this chapter and as required under federal statute and HUD requirements, the general requirements of the HCV program apply to EHV.

PART I: FUNDING

TPS-I.A. FUNDING OVERVIEW

The American Rescue Plan Act of 2021 (ARP) 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. The PHA must maintain separate financial records from its regular HCV funding for all EHV funding.

Housing Assistance Payments (HAP) Funding

ARP funding obligated to the PHA 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 the PHA for the EHV on a calendar year (CY) basis commencing with CY 2023. The renewal funding allocation will be based on the PHA's actual EHV HAP costs in leasing, similar to the renewal process for the regular HCV program. EHV renewal funding is not part of the annual HCV renewal funding formula; EHV are renewed 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 four types of fees and funding are allocated as part of the EHV program:

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- **Preliminary fees** support immediate start-up costs that the PHA will incur in implementing alternative requirements under EHV, such as outreach and coordination with partnering agencies:

- \$400 per EHV allocated to the PHA, 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 (TPS- I.B).

- **Placement fees/expedited issuance reporting fees** will support initial lease-up costs and the added cost and effort required to expedite leasing of EHV:

- \$100 for each EHV initially leased, if the PHA 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
 - o \$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.
 - o HUD will determine placement fees in the event of multiple EHV allocations and funding increment effective dates.

- Placement/expedited issuance fees only apply to the initial leasing of the voucher; they are not paid for family moves or to turnover vouchers.

- **Ongoing administrative fees**, which are calculated in the same way as the standard HCV program:

- 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.

- Ongoing EHV administrative fees may be subject to proration in future years, based on available EHV funding.

- **Services fees**, which are a one-time fee to support PHAs' efforts to implement and operate an effective EHV services program in its jurisdiction (TPS-I.B):

- The fee is allocated once the PHA's CACC is amended to reflect EHV funding.

- The amount allocated is \$3,500 for each EHV allocated.

TPS-I.B. SERVICE FEES

Services fee funding must be initially used for defined eligible uses and not for other administrative expenses of operating the EHV program. 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

The PHA must establish the eligible uses and the parameters and requirements for service fees in the PHA's administrative plan.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers The eligible uses for service fees include:

Housing search assistance, which 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 HACP forms, and helping to expedite the EHV leasing process for the family. Application fees/non-refundable administrative or processing fees/refundable application deposit assistance. HACP may choose to assist the family with some or all these expenses.

Security deposit assistance. The amount of the security deposit assistance may not exceed the lesser of two months' rent to owner, the maximum security deposit allowed under applicable state and/or local law, the actual security deposit required by the owner or the per-household \$3,500 service fee. HACP reserves the right to pay the security deposit assistance directly to the owner or may pay the assistance to the family. If paid to the family, the PHA will require documentation that the family paid the security deposit.

Utility deposit assistance/utility arrears. HACP may provide utility deposit assistance 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.

HACP may pay the utility deposit assistance directly to the utility company or may pay the assistance to the family. If paid to the family, HACP will

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require documentation the family paid the utility deposit. HACP will require the utility supplier to return the utility deposit assistance to the family at such time the deposit is returned by the utility supplier (less any amounts retained by the utility supplier). 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. HACP may also provide the family with assistance to help address these utility arrears to facilitate leasing. Utility deposit assistance returned to HACP will be used for either services fee eligible uses or other EHV administrative costs, as required by HUD.

Moving expenses (including move-in fees and deposits). HACP may provide assistance for some or all of the family's reasonable moving expenses when they initially lease a unit with the EHV. HACP 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., HACP 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.

Tenant-readiness services. HACP may use fees to help 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. HACP may use services fee funding to assist the family with some or all of the costs of acquiring essential household items such as tableware, cooking equipment, beds or bedding, and essential sanitary products such as soap and toiletries.

Any services fee assistance that is returned to HACP after its initial or subsequent use may only be applied to the eligible services fee uses defined in Notice PIH 2021-15 (or subsequent notice) or other EHV administrative costs. Any amounts not expended for these eligible uses when the HACP's EHV program ends must be remitted to HUD.

PART II: PARTNERING AGENCIES

TPS-II.A. CONTINUUM OF CARE (COC)

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PHAs that accept an allocation of EHV's 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's.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, the PHA will enter into an MOU with the Department of Health, Housing and Homeless Services as custodian of the Continuum of Care of Contra Costa County to assist and provide services on behalf of EHV participating households. See Exhibit TPS-1 for a copy of the MOU.

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TPS-II.B. OTHER PARTNERING ORGANIZATIONS

The PHA 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 the PHA chooses to partner with such agencies, the PHA must either enter into an MOU with the partnering agency or the partnering agency may be added to the MOU between the PHA and CoC.

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HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers HACP has not yet added any third-party service providers to the MOU between the HACP and CoC as contributing partners to assist and provide services on behalf of EHV participating households at this time. See Exhibit TPS-1 for a copy of the MOU.

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TPS-II.C. REFERRALS

CoC and Partnering Agency Referrals

The primary responsibility of the CoC under the MOU with the PHA is to make direct referrals of qualifying individuals and families to the PHA. The PHA must generally refer a family that is seeking EHV assistance directly from the PHA 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's. The CoC or other direct referral partner must provide supporting documentation to the PHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance.

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HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, the CoC or partnering agency must establish and implement a system to identify EHV- eligible individuals and families within the agency's caseload and make referrals to the HACP. The CoC or other

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partnering agency must certify that the EHV applicants they refer to HACP meet at least one of the four EHV eligibility criteria. HACP will maintain a copy of the referral or certification from the CoC or other partnering agency in the participant's file along with other eligibility paperwork. Homeless service providers shall use the certification form found in Exhibit TPS-2 of this chapter. Victim services providers shall use the certification form found in Exhibit TPS-3 of this chapter when identifying eligible families who qualify as victims of human trafficking.

As part of the MOU, HACP and CoC or other partnering agency will identify staff positions to serve as lead EHV liaisons. These positions will be responsible for transmission and acceptance of referrals. The CoC or partnering agency must commit sufficient staff and resources to ensure eligible individuals and families are identified and determined eligible in a timely manner.

HACP liaison responsible for acceptance of referrals will contact the CoC or partnering agency liaison via email indicating the number of vouchers available and requesting an appropriate number of referrals. No more than five business days from the date the CoC or partnering agency receives this notification, the CoC or partnering agency liaison will provide HACP with a list of eligible referrals including the name, address, and contact phone number for each adult individual who is being referred; a completed release form for each adult family member; and a written certification for each referral indicating they are EHV-eligible.

HACP and CoC have determined that the best approach to utilize the EHV is to create better flow and mobility within the supportive housing and sheltered community. Households who were initially directed to Permanent Supportive Housing (PSH) through the Coordinated Entry System or are eligible for Moving On prioritization would best be served ahead of all other categories. Households that are identified as no longer needing a higher level of care or services and ready to transition to a permanent assisted housing option using the EHV would be prioritized to move out of the PSH/RRH units and make them available for other families who need those service-enriched housing options. This would increase the flow of housing opportunities within the CoC and would also open up PSH/RRH slots for those who need the level of services and subsidy that come with PSH/RRH. In addition, as a third priority category, HACP and the CoC will direct EHV to eligible homeless families pursuant to the HUD definition of homelessness indicated above.

A. Moving On

As part of its strategic priority to end homelessness, the Continuum of Care (CoC) has adopted Moving On strategies in the community for clients in permanent supportive housing (PSH) who may no longer need or want the intensive services offered in PSH but continue to need assistance to maintain their housing. Moving On strategies challenge a community to create

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partnerships between the CoC and mainstream housing programs such as the Housing Choice Voucher (HCV) program, and HUD-funded multifamily housing providers.

Moving On enables tenants to move on from supportive housing by offering affordable housing and connections to other resources. This may include a physical move to a new home, or a 'transition in place' arrangement where the services move on to another tenant. The decision to pursue Moving On is always voluntary and driven by the tenant.

B. Permanent Supportive Housing

1. PSH/Moving On + DV criteria (Fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking)
2. PSH/Moving On
3. Homeless - DV criteria AND highest length of time at shelter, basic income, needs few to no services (Long Term Stayer)
4. Homeless - AND highest length of time at shelter, basic income, needs few to no services (Long Term Stayer)

Permanent supportive housing is an intervention that combines affordable housing assistance with voluntary support services to address the needs of chronically homeless people. The services are designed to build independent living and tenancy skills and connect people with community-based health care, treatment and employment services.

Permanent supportive housing is permanent housing with indefinite leasing or rental assistance paired with supportive services to assist homeless persons with a disability or families with an adult or child member with a disability achieve housing stability.

C. Shelters

Shelters serve households who are literally homeless and offer an array of housing and case management services depending on the shelter provider. Many participants of shelter programs have income and have reached stability but need deeply affordable and subsidized housing. The lack of affordable housing options presents significant barriers for those in shelter to rapidly exit, and thereby reduces the number of beds available for new clients. Those who remain in the shelter for past 180 days are considered long term stayers and have significant challenges exiting to permanent housing.

Prioritization

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As a result of defining the criteria of eligible households, the following prioritization system has been developed to memorialize the order in which households will be considered for an EHV.

Category 1 – PSH Moving On

Qualifies under EHV Eligibility Category 4 Recently Homeless: Section 8 defines this as individuals and families who have previously been classified by the CoC as homeless, but are not currently homeless as a result of homelessness assistance (financial or services), temporary rental assistance, etc. and where the CoC or its designee determines that the loss of such assistance would result in a return to homelessness. Examples of such households may include (but are not limited to) participants in PSH.

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Category 2 – Homeless/Sheltered Long Stayers

Qualifies under EHV Eligibility Category 1: Homeless.

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TPS-II.D. REFERRAL PROCESS

HACP shall notify the CoC's Coordinated Entry System Administrator when EHV's become available. Within five (5) business days of being notified of the availability of EHV's, the CoC shall make every effort to make a referral to HACP's point of contact.

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For PSH clients that are interested in and eligible for Emergency Housing Vouchers through the Moving On Program, CE will convene the Housing Placement Committee to review the client's case history to discuss the key indicators of the client's capacity for the Moving On program. Among the indicators to be considered are as follows:

- Housing History
- Financial Stability
- Service Needs and Supports (includes connections to health, mainstream resources, and family or other natural supports)
- Household Composition

Weighing these indicators, the Housing Placement Committee will make a determination as to whether the client should be recommended for an Emergency Housing Voucher. Recommended clients will be referred to the Housing Authority of Contra Costa County by CE once all eligibility documentation has been received.

Any and all grievances regarding the CoC process will be handled within the grievance procedures outlined in the CoC's written standards while any grievances regarding denial to participate or termination of assistance in the EHV

Program shall be addressed through the HACP Administrative Plan for the Housing Choice Voucher Program.

CE will only send HACP referrals for the number of spaces that are open and will not send more than one referral per opening, unless requested by HACP.

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Offers of Assistance with CoC Referral

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HACP may make an EHV available without a referral from the CoC or other partnering organization in order to facilitate an emergency transfer under VAWA in accordance with the HACP's Emergency Transfer Plan (ETP) in Chapter 16. HACP must also take direct referrals from outside the CoC if:

- The CoC does not have a sufficient number of eligible families to refer to HACP; or
- The CoC does not identify families that may be eligible for EHV assistance because they are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking.

If at any time HACP is not receiving enough referrals or is not receiving referrals in a timely manner from the CoC or other partner referral agencies (or HACP and CoC cannot identify any such alternative referral partner agencies), HUD may permit HACP on a temporary or permanent basis to take EHV applications directly from applicants and admit eligible families to the EHV program in lieu of or in addition to direct referrals in those circumstances.

VAWA Direct Referral

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Pursuant to guidance in PIH 2021-15, HACP will also accept direct referrals for VAWA- eligible households who may be fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking.

HACP shall execute separate MOUs with these entities to ensure proper HUD compliance. In addition, HACP shall inform the CoC, through CES, in the event that an EHV household is assisted directly so that proper tracking and services are made available to the household.

PART III: WAITING LIST MANAGEMENT

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TPS-III. A. HCV WAITING LIST

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The regulation that requires the PHA 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 the PHA's HCV waiting list.

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The PHA must inform families on the HCV waiting list of the availability of EHV by, at a minimum, either by posting the information to their website or providing public notice in their respective communities in accordance with the requirements listed in Notice PIH 2021-15.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, HACP will give public notice by publishing, on its website, a description of the eligible populations to which EHV are limited.

- Clearly state that the availability of these EHV is managed through a direct referral process;
- Advise the family to contact the CoC (or any other HACP referral partner, if applicable) if the family believes they may be eligible for EHV assistance.

HACP will ensure effective communication with persons with disabilities, including those with vision, hearing, and other communication-related disabilities in accordance with Chapter 2. HACP will also take reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP) in accordance with Chapter 2.

TPS-III.B. EHV WAITING LIST

The HCV regulations requiring the PHA 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 or partnering agency exceeds the EHV available, the PHA must 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.

Further, the EHV waiting list is not subject to PHA policies in Chapter 4 regarding opening and closing the HCV waiting list. The PHA 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.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, HACP shall not establish and operate a separate waiting list for EHV eligible families for whom a voucher is not readily available. The CoC through CES will only refer applicants for available vouchers.

TPS-III.C. PREFERENCES

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HCV Waiting List Preferences If local preferences are established by the PHA for HCV, they do not apply to EHV. However, if the PHA has a homeless preference or a VAWA preference for the HCV waiting list, the PHA must adopt additional policies related to EHV in accordance with Notice PIH 2021-15.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, HACP does not offer either a homeless or a VAWA preference for the HCV waiting list.

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EHV Waiting List Preferences

With the exception of a residency preference, the PHA may choose, in coordination with the CoC and other referral partners, to establish separate local preferences for EHV. The PHA may, however, choose to not establish any local preferences for the EHV waiting list.

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HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, HACP has not adopted any preferences for the EHV waiting list because it is choosing not to maintain an EHV wait list. CES will provide priority for households fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking.

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PART IV: FAMILY ELIGIBILITY

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PS-IV.A. 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 the PHA. The PHA determines that the family meets other eligibility criteria for the HCV program, as modified for the EHV program and outlined below.

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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;

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- 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 the PHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance. The PHA must retain this documentation as part of the family's file.

Detailed definitions of the four eligibility criteria can be found in the authorizing HUD Notice PIH 2021-15.

TPS-IV.C. 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, the PHA must 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.

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- 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 PHA must 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.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, while HACP will deny admission to the program if any adult member (or head of household or spouse, regardless of age) fails to sign and submit consent forms, HACP will first notify the family of the limited EHV grounds for denial of admission as part of the notice of denial that will be mailed to the family.

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Permissive Denial

Notice PIH 2021-15 lists permissive prohibitions for which the PHA 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.

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

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HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, in consultation with the CoC, HACP will apply permissive prohibitions to the screening of EHV applicants. Determinations using permissive prohibitions will be made based on an individualized assessment of relevant mitigating information in accordance with policies in Section 3-III.E.

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HACP will establish the following permissive prohibitions:
If HACP determines that any household member is currently engaged in, or has engaged in within the previous 12 months:

- Violent criminal activity

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- Other 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
- If the family engaged in or threatened abusive or violent behavior toward HACP personnel within the previous 12 months.
- HACP 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, HACP 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 HACP or to another PHA in connection with Section 8 or public housing assistance under the 1837 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 HACP to pay amounts owed to a PHA, or amounts paid to an owner by a PHA;
- The family would otherwise be prohibited admission under alcohol abuse standards established by HACP in accordance with 24 CFR 982.553(a)(3);
- HACP determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission, drug-related criminal activity.

TPS-IV.D. INCOME VERIFICATION AT ADMISSION

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Self-Certification at Admission

The requirement to obtain third-party verification of income in accordance with Notice PIH 2018-18 does not apply to the EHV program applicants at admission, and alternatively, PHAs may consider self-certification the highest form of income verification at admission. As such, PHA policies related to the verification of income in Section 7-I.B. do not apply to EHV families at admission. Instead, applicants must submit an affidavit attesting to their reported income, assets, expenses, and other factors that would affect an income eligibility determination.

Additionally, applicants may provide third-party documentation that represents the applicant's income within the 60-day period prior to admission or voucher issuance but is not dated within 60 days of the PHA's request.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, any documents used for verification must be the original (not photocopies) and dated within the 60-day period prior to admission. The documents must not be damaged, altered, or in any way illegible. Printouts from webpages are considered original documents. Any family self-certifications must be made in a format acceptable to HACP and must be signed by the family member whose information or status is being verified.

HACP will incorporate additional procedures to remind families of the obligation to provide true and complete information in accordance with Chapter 14. HACP will address any material discrepancies (i.e., unreported income or a substantial difference in reported income) that may arise later. HACP shall offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, HACP will terminate the family's assistance in accordance with the policies in Chapter 12.

Any applicable exceptions made under the CARES Act for the "regular" voucher program, will be applied to EHV participants.

Recently Conducted Income Determinations

PHAs may accept income calculations and verifications from third-party providers or from an examination that the PHA 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 calculated in accordance with rules outlined at 24 CFR Part 5 and within the last six months; and

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- The family certifies there has been no change in income or family composition in the interim.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, HACP will accept income calculations and verifications from third-party providers provided they meet the criteria outlined above. The family certification must be made in a format acceptable to HACP and must be signed by all adult family members whose information or status is being verified.

At the time of the family's annual reexamination HACP shall conduct the annual reexamination of income as outlined at 24 CFR 982.516 and HACP's policies in Chapter 11.

EIV Income Validation

Once HUD makes the EIV data available to PHAs under this waiver and alternative requirement, the PHA must:

- Review the EIV Income and Income Validation Tool (IVT) reports to confirm and validate family-reported income within 90 days of the PIC 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.

Prior to admission, PHAs must continue to use HUD's EIV system to search for all household members using the Existing Tenant Search in accordance with PHA policies in Chapter 3.

If a PHA later determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program in accordance with Chapter 12.

TPS-IV.E. SOCIAL SECURITY NUMBER AND CITIZENSHIP STATUS VERIFICATION

For the EHV program, the PHA is not required to obtain and verify SSN documentation and documentation evidencing eligible noncitizen status before

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admitting the family to the EHV program. Instead, PHAs may adopt policies to admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. As an alternative requirement, such individuals must provide the required documentation within 180 days of admission to be eligible for continued assistance, pending verification, unless the PHA 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 PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, HACP will not admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. HACP will follow existing policies regarding the disclosure and documentation of these two factors of eligibility.

HACP may provide an additional 60-day 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 HACP determines that an ineligible family received assistance, HACP will take steps to terminate that family from the program in accordance with policies in Chapter 12.

Any applicable exceptions made under the CARES Act for the “regular” voucher program, will be applied to EHV participants.

TPS-IV.F. 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, the PHA must 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, the PHA must take steps to terminate that family from the program.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, HACP will follow existing policies regarding the disclosure and documentation of birth or disability status. Any applicable exceptions made under the CARES Act for the “regular” voucher program, will be applied to EHV participants.

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If the PHA determines that an ineligible family received assistance, the PHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

TPS-IV.G. INCOME TARGETING

The PHA must determine income eligibility for EHV families in accordance with 24 CFR982.201 and PHA policy in Chapter 3; however, income targeting requirements do not apply for EHV families. The PHA 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.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, HACP 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 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. PHA policies on extensions as outlined in Section 5-II.E. will apply.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, 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 the PHA grants an extension. An extension of the search period will be determined on a case-by-case basis. All households will be asked to document their housing search to confirm that they made efforts to locate housing before any extension will be considered or granted.

TPS-V.B. HOUSING SEARCH ASSISTANCE

The PHA must ensure housing search assistance is made available to EHV families during their initial housing search. The housing search assistance may be provided directly by the PHA or through the CoC or another partnering agency or entity.

At a minimum, housing search assistance must:

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- Help individual 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 transportation assistance and directions to potential units;
- Conduct owner outreach;
- Assist with the completion of rental applications and PHA forms; and
- Help expedite the EHV leasing process for the family

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, as identified in the MOU between HACP and CoC, the following housing search assistance will be provided to each EHV family either directly or through a third party contracted by HACP:

HACP's Housing Search Assistance shall include the following:

- Conduct owner outreach in accordance with policies in Chapter 13
- 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
- At least every 30 days, conduct proactive check-ins via email and telephone with families who are searching with an EHV and remind them of their voucher expiration date
- Assign a dedicated landlord liaison for EHV voucher families

The CoC shall further assist with the following:

- 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 transportation assistance to potential units when available
- Assist the family with the completion of rental applications and PHA forms

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TPS-V.C. **HQSNSPIRE** PRE-INSPECTIONS

To expedite the leasing process, PHAs may pre-inspect available units that EHV families may be interested in leasing in order to maintain a pool of eligible units.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, HACP will not conduct any pre-inspections of available units. HACP will make every effort to fast-track the inspection process, including adjusting the normal inspection schedule for any required re-inspections.

TPS-V.D. 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 the PHA policy in Section 9-I.E., Term of Assisted Tenancy.

TPS-V.E. 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 the PHA 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 the PHA 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.

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- 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, the initial PHA must inform the family how portability may impact the special EHV services and assistance that may be available to the family.

The initial PHA is required to help facilitate the family's portability move to the receiving PHA and inform the family of this requirement in writing, taking reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP).

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, in addition to following HACP's policy on briefings in Chapter 5, as part of the briefing packet for EHV families, the PHA will include a written notice that the PHA will assist the family with moves under portability.

For limited English proficient (LEP) applicants, HACP provides interpretation services in accordance with the LEP plan (See Chapter 2).

Coordination of Services

If the portability move is in connection with the EHV family's initial lease-up, the receiving PHA and the initial PHA must consult and coordinate on the EHV services and assistance that will be made available to the family.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, For EHV families who are exercising portability, when HACP contacts the receiving PHA in accordance with Section 10-II.B. Preapproval Contact with Receiving PHA, HACP 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 HACP may provide to the receiving PHA on behalf of the family.

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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 are 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.

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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.

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TPS-V.F. PAYMENT STANDARDS

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Payment Standard Schedule

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For the EHV program, HUD has waived the regulation requiring a single payment standard for each unit size. Instead, the PHA may, but is not required to, establish separate higher payment standards for EHV. Lower EHV payment standards are not permitted. If the PHA is increasing the regular HCV payment standard, the PHA must 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 the PHA 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. The PHA may establish an exception payment standard up to 120 percent (as opposed to 110 percent) of the HUD published Small Area FMR for that ZIP code area. The exception payment standard must apply to the entire ZIP code area. - The PHA must notify HUD if it establishes an EHV exception payment standard based on the SAFMR.

HACP Policy:

HACP does not participate in this program. However, if awarded EHV Vouchers, HACP will implement higher payment standards for EHV. The EHV payment standards will be set at 110% of the HUD-published Fair Market Rent (FMR).

At no time will the EHV payment standards fall below the HCV payment standards.

If HACP increases the HCV payment standard, HACP will also increase the EHV payment standard if it would be otherwise lower than the new regular HCV payment standard.

Rent Reasonableness

All rent reasonableness requirements apply to EHV units, regardless of whether the PHA has established an alternative or exception EHV payment standard.

Increases in Payment Standards

The requirement that the PHA apply increased payment standards at the family's first regular recertification on or after the effective date of the increase does not apply to EHV. The PHA may, but is not required to, establish an alternative policy on when to apply the increased payment standard, 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.

HACP Policy:

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HACP will not establish an alternative policy for increases in the payment standard. HACP Policy: in Section 11-III.B. governing increases in payment standards will apply to EHV.

TPS-V.G. TERMINATION OF VOUCHERS

After September 30, 2023, a PHA may not reissue EHV when assistance for an EHV- assisted family ends. This means that when an EHV participant (a family that is receiving rental assistance under a HAP contract) leaves the program for any reason, the PHA may not reissue that EHV to another family unless it does so no later than September 30, 2023.

If an applicant family that was issued the EHV is unsuccessful in finding a unit and the EHV expires after September 30, 2023, the EHV may not be reissued to another family.

All EHV under lease on or after October 1, 2023, may not under any circumstances be reissued to another family when the participant leaves the program for any reason.

An EHV that has never been issued to a family may be initially issued and leased after September 30, 2023, since this prohibition only applies to EHV that are being reissued upon turnover after assistance to a family has ended. However, HUD may direct PHAs administering EHV to cease leasing any unleased EHV if such action is determined necessary by HUD to ensure there will be sufficient funding available to continue to cover the HAP needs of currently assisted EHV families.

PART VI: USE OF FUNDS, REPORTING, AND FINANCIAL RECORDS

EHV funds allocated to HACP 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 HACP 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 HACP 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

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including, but not limited to, those resulting from Office of Inspector General (OIG), Quality Assurance Division (QAD), or other monitoring review findings. HACP must comply with EHV reporting requirements in the Voucher Management System (VMS) and Financial Data Schedule (FDS) as outlined in Notice PIH 2021-15.

HACP must 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's in accordance with the HCV program requirements at 24 CFR 982.158.

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PART VI: STABILITY VOUCHER PROGRAM

19-VI.A. PROGRAM OVERVIEW [Notice PIH 2022-24]

The Consolidated Appropriations Act, 2021 (Public Law 116-260) (2021 Act) provided new incremental funding for voucher assistance through Stability Vouchers (SVs) for households who are:

- Homeless, as defined in section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a));
- At-risk of homelessness;
- Those fleeing or attempting to flee domestic violence dating violence, sexual assault, stalking, or human trafficking; and
- Veterans and families that include a veteran family member that meet one of the above criteria.

HUD may waive certain statutory and regulatory provisions to administer the SVs (except for requirements related to tenant rights and protections, rent setting, fair housing, nondiscrimination, labor standards and the environment) upon a finding that any such waivers or alternative requirements are necessary to facilitate the use of funds made available for SVs. Unless expressly waived below, all statutory and regulatory requirements and HUD directives regarding the HCV program are applicable to SVs, including the use of all HUD required contracts and other forms. A PHA may request additional good cause regulatory waivers as established in Notice PIH 2018-16 in connection with the use of the SVs, which HUD will consider and assess upon the request of the PHA.

19-VI.B. PARTNERING ORGANIZATION [Notice PIH 2022-24]

SV funding is only awarded to PHAs that partner with eligible Continuums of Care (CoCs) or other entities that serve the targeted population, such as Victim Service Providers (VSPs) and Veteran Service Organizations (VSOs) serving the targeted population in the PHA's jurisdiction to implement coordinated approaches to reduce the prevalence of homelessness, improve service engagement, and promote housing stability while ensuring geographical need of assistance.

The PHA must enter into a Memorandum of Understanding (MOU) with the CoC to establish a partnership with the CoC to pair SVs with CoC-funded supportive services, and to collaborate with the CoC and other stakeholders to develop a prioritization plan for these vouchers.

HACP Policy:

HACP does not participate in this program. However, if awarded

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special funding under this program, the HACP would enter into an MOU with the following partnering organization *[insert names of CoC, VSP, and/or VSO]*. See Exhibit 19-3 for a copy of the MOU.

19-VI.C. REFERRALS [Notice PIH 2022-24]

In general, families are issued SVs as the result of either:

- The direct referral process from the CoC or other partnering organizations; or
- A situation where the PHA makes an SV available in order to facilitate an emergency transfer for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking.

CoC Referrals

The primary responsibility of the CoC under the MOU is to make direct referrals of qualifying individuals and families to the PHA and to identify any CoC-funded available supportive services that may be paired with SVs.

The CoC or other partnering agency must certify that the SV applicants they refer to the PHA meet the definition of a qualifying individual or family for SV assistance.

The referring agency must provide documentation to the PHA of the referring agency's verification that the family meets one of the four eligible categories for SV assistance. The PHA must retain this documentation as part of the family's file.

HACP Policy:

HACP does not participate in this program. However, if awarded special funding under this program, the CoC or partnering agency must establish and implement a system to identify SV-eligible individuals and families within the agency's caseload and make referrals to the PHA.

The CoC or other partnering agency must certify that the SV applicants they refer to the PHA meet SV eligibility criteria. The PHA will maintain a copy of the referral or certification from the CoC or other partnering agency in the participant's file along with other eligibility paperwork. Homeless service providers may, but are not required to, use the certification form found in Exhibit 19-1 of this chapter. Victim services providers may, but are not required to, use the certification form found in Exhibit 19-2 of this chapter when identifying eligible families who qualify as victims of human trafficking.

As part of the MOU, the PHA and CoC or other partnering agency will identify staff positions to serve as lead SV liaisons. These positions will be

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responsible for transmission and acceptance of referrals. The CoC or partnering agency must commit sufficient staff and resources to ensure eligible individuals and families are identified and determined eligible in a timely manner.

The PHA liaison responsible for acceptance of referrals will contact the CoC or partnering agency liaison via email indicating the number of vouchers available and requesting an appropriate number of referrals. No more than five business days from the date the CoC or partnering agency receives this notification, the CoC or partnering agency liaison will provide the PHA with a list of eligible referrals including the name, address, and contact phone number for each adult individual who is being referred; a completed release form for each adult family member; and a written certification for each referral indicating they are SV-eligible.

Referrals from Outside the CoC

The PHA must also take direct referrals from outside the CoC process if:

- The CoC does not have a sufficient number of eligible families to refer to the PHA; or
- The CoC does not identify families that may be eligible for SV assistance because they are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking.

If a direct referral is taken from outside of the CoC, the PHA must enter into a partnership to receive direct referrals from another entity, assuming there are such additional organizations that can certify that an individual or family is eligible for an SV.

The PHA must enter into an MOU with a partnering referral agency or may add the partnering referral agency to the MOU between the PHA and CoC.

19-VI.D. WAITING LIST [Notice PIH 2022-24]

HCV Waiting List

The regulation that requires the PHA 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 SV program. Direct referrals are not added to the PHA's HCV waiting list.

The PHA must inform families on the HCV waiting list of the availability of SVs

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by, at a minimum, either by posting the information to their website or providing public notice in their respective communities in accordance with the requirements listed in Notice PIH 2022-24.

HACP Policy:

HACP does not participate in this program. However, if awarded special funding under this program, the HACP would post information about the SV program for families on the HACP's HCV waiting list on their website. The notice will:

Describe the eligible populations to which SVs are limited.

Clearly state that the availability of these SVs is managed through a direct referral process.

Advise the family to contact the CoC (or any other PHA referral partner, if applicable) if the family believes they may be eligible for SV assistance.

The HACP would ensure effective communication with persons with disabilities, including those with vision, hearing, and other communication-related disabilities in accordance with Chapter 2. The HACP would also take reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP) in accordance with Chapter 2.

SV Waiting List

The HCV regulations requiring the PHA to operate a single waiting list for admission to the HCV program do not apply to PHAs operating the SV program. Instead, when the number of applicants referred by the CoC or partnering agency exceeds the SVs available, the PHA must maintain a separate waiting list for SV referrals. Upon turnover, SV vouchers must continue to remain available for eligible families.

Further, the SV waiting list is not subject to PHA policies in Chapter 4 regarding opening and closing the HCV waiting list. The PHA will work directly with its CoC and other referral agency partners to manage the number of referrals and the size of the SV waiting list.

HCV Waiting List Preferences

If local preferences are established by the PHA for HCV in Chapter 4, they do not apply to SVs. However, if the PHA has a homelessness preference or a preference for survivors of domestic violence, dating violence, sexual assault, stalking, or human trafficking for the regular HCV program, the PHA must refer any applicant on the waiting list that indicated they qualified for this preference to the CoC, or the applicable partnering referral agency.

HACP Policy:

HACP does not participate in this program. However, the PHA does not offer either a homelessness or VAWA preference for the HCV waiting list.

SV Waiting List Preferences

With the exception of a residency preference, which may not be applied to the PHA's SV waiting list, the PHA may choose, in coordination with the CoC and other referral partners, to establish separate local preferences for SVs, or may simply choose to not establish any local preferences for the SV waiting list. The preference system may not prohibit SV admissions from any of the four qualifying categories of eligibility.

HACP Policy:

HACP does not participate in this program. However, No local preferences have been established for the SV waiting list.

19-VI.E. FAMILY ELIGIBILITY [Notice PIH 2022-24]

Referring Agency Determination of Eligibility

The CoC or referring agency determines whether the individual or family meets any one of the eligibility criteria described in Notice PIH 2022-24 and then refers the family to the PHA. The PHA determines that the family meets other eligibility criteria for the HCV program, as modified for the SV program and outlined below.

In order to be eligible for an SV, a household must meet one of four eligibility criteria:

- Homeless, as defined in section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)) and 24 CFR 578.3;
- At-risk of homelessness as defined in 24 CFR 5.78.3;
- Those fleeing or attempting to flee domestic violence dating violence, sexual assault, stalking, or human trafficking; and
- Veterans [as defined in 38 U.S.C. 101(2); 38 CFR 3.1(d)] and families that include a veteran family member that meet one of the above criteria.

Mandatory Denials

HUD waived 24 CFR 982.552 and 982.553 in part for the SV applicants and

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established alternative requirements 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 SV. Instead, the SV alternative requirement listed in this section will apply to all SV applicants.

The mandatory and permissive prohibitions listed in Notice PIH 2022-24 and in this chapter, however, apply only when screening the individual or family for eligibility for an SV. When adding a family member after the family has been placed under a HAP contract with SV assistance, the regulations at 24 CFR 982.551(h)(2) apply. Other than the birth, adoption, or court-awarded custody of a child, the PHA must approve additional family members and may apply its regular HCV screening criteria in Chapter 3 in doing so.

Under alternative requirements for the SV program, mandatory denials for SV 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 PHA will also deny assistance to household members already receiving assistance from another program.

The PHA must 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 SV grounds for denial of admission first.

HACP Policy:

HACP does not participate in this program. However, while the HACP will deny admission to the program if any adult member (or head of household or spouse, regardless of age) fails to sign and submit consent forms, the PHA will first notify the family of the limited SV grounds for denial of admission as part of the notice of denial that will be mailed to the family.

Permissive Denial

Notice PIH 2022-24 lists permissive prohibitions for which the PHA may, but

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is not required to, deny admission to SV families. The notice also lists prohibitions that, while allowable under the HCV program, may not be used to deny assistance for SV families.

If the PHA intends to establish permissive prohibition policies for SV applicants, the PHA must first consult with its CoC partner to understand the impact that the proposed prohibitions may have on referrals and must take the CoC's recommendations into consideration.

HACP Policy:

HACP does not participate in this program. N/A In consultation with the CoC, the PHA will apply permissive prohibition to the screening of SV applicants. Determinations using permissive prohibitions will be made based on an individualized assessment of relevant mitigating information in accordance with policies in Section 3-III.E. of the administrative plan.

The PHA will establish the following permissive prohibitions:

If the PHA determines that any household member is currently engaged in, or has engaged in within the previous 12 months:

Violent criminal activity

Other 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

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 PHA personnel within the previous 12 months.

Prohibitions based on criminal activity for the eligible SV populations regarding drug possession will be considered apart from criminal activity against persons (i.e., violent criminal activity).

In compliance with PIH 2022-24, the PHA **will not** deny an SV 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

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The family currently owes rent or other amounts to the PHA 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 the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA

The family would otherwise be prohibited admission under alcohol abuse standards established by the PHA in accordance with 24 CFR 982.553(a)(3)

The PHA determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission, drug-related criminal activity

Self-Certification of Income at Admission

The requirement to obtain third-party verification of income in accordance with Notice PIH 2018-18 does not apply to the SV program applicants at admission, and alternatively, PHAs may consider self-certification the highest form of income verification at admission. As such, PHA policies related to the verification of income in Section 7-I.B. do not apply to SV families at admission. Instead, applicants must submit an affidavit attesting to their reported income, assets, expenses, and other factors that would affect an income eligibility determination.

Additionally, applicants may provide third-party documentation that represents the applicant's income within the 60-day period prior to admission or voucher issuance but is not dated within 60 days of the PHA's request.

HACP Policy:

HACP does not participate in this program. N/A Any documents used for verification must be the original (not photocopies) and dated within the 60-day period prior to admission. The documents must not be damaged, altered, or in any way illegible.

Printouts from webpages are considered original documents.

Any family self-certifications must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified.

The PHA will incorporate additional procedures to remind families of the obligation to provide true and complete information in accordance with

Chapter 14. The PHA will address any material discrepancies (i.e., unreported income or a substantial difference in reported income) that may arise later. The PHA 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 PHA will terminate the family's assistance in accordance with the policies in Chapter 12.

Recently Conducted Income Determinations

PHAs may accept income calculations and verifications from third-party providers or from an examination that the PHA 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 calculated in accordance with rules outlined at 24 CFR Part 5 and within the last six months; and
- The family certifies there has been no change in income or family composition in the interim.

HACP Policy:

HACP does not participate in this program. N/A - The PHA will accept income calculations and verifications from third-party providers provided they meet the criteria outlined above.

The family certification must be made in a format acceptable to the PHA and must be signed by all adult family members whose information or status is being verified.

At the time of the family's annual reexamination, the PHA must conduct the annual reexamination of income as outlined at 24 CFR 982.516 and the PHA policies in Chapter 11.

EIV Income Validation

Once HUD makes the EIV data available to PHAs under this waiver and alternative requirement, the PHA must:

- Review the EIV Income and Income Validation Tool (IVT) reports to confirm and validate family-reported income within 90 days of the PIC 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.

Prior to admission, PHAs must continue to use HUD's EIV system to search for all household members using the Existing Tenant Search in accordance with PHA policies in Chapter 3.

If a PHA later determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program in accordance with Chapter 12.

Social Security Number and Citizenship Status Verification

For the SV program, the PHA is not required to obtain and verify SSN documentation and documentation evidencing eligible noncitizen status before admitting the family to the SV program. Instead, PHAs may adopt policies to admit SV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. As an alternative requirement, such individuals must provide the required documentation within 180 days of admission to be eligible for continued assistance, pending verification, unless the PHA 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 PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

HACP Policy:

HACP does not participate in this program. N/A -The PHA will admit SV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. These individuals must provide the required documentation in accordance with policies in Chapter 7 within 180 days of admission. The PHA may provide an additional 60-day 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 the PHA determines that an ineligible family received assistance, the PHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

Age and Disability Verifications

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, the

PHA must 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, the PHA must take steps to terminate that family from the program.

HACP Policy:

HACP does not participate in this program. N/A The PHA will accept self-certification of date of birth and disability status if a higher form of verification is not immediately available. The certification must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified. If self-certification is accepted, within 90 days of admission, the PHA will verify the information in EIV or through other third-party verification if the information is not available in EIV. The PHA 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 and/or disability status.

If the PHA determines that an ineligible family received assistance, the PHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

Income Targeting

The PHA must determine income eligibility for SV families in accordance with 24 CFR 982.201 and PHA policy in Chapter 3; however, income targeting requirements do not apply for SV families. The PHA may still choose to include the admission of extremely low-income SV families in its income targeting numbers for the fiscal year in which these families are admitted.

HACP Policy:

HACP does not participate in this program. N/A - The PHA will not include the admission of extremely low-income SV families in its income targeting numbers for the fiscal year in which these families are admitted.

19-VI.F. HOUSING SEARCH AND LEASING

Initial Voucher Term

Unlike the standard HCV program, which requires an initial voucher term of at least 60 days, SV vouchers must have an initial search term of at least 120 days.

PHA policies on extensions as outlined in Section 5-II.E. will apply.

HACP Policy:

HACP does not participate in this program. However, if awarded special funding under this program, all SVs 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 the PHA grants an extension.

Pre-Inspections

To expedite the leasing process, PHAs may pre-inspect available units that SV families may be interested in leasing in order to maintain a pool of eligible units.

HACP Policy:

HACP does not participate in this program. N/A - To expedite the leasing process, the PHA may pre-inspect available units that SV families may be interested in leasing to maintain a pool of eligible units. If an SV family selects a unit that passed a 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, the PHA will make every effort to fast-track the inspection process, including adjusting the normal inspection schedule for any required reinspections.

Initial Lease Term

Unlike in the standard the HCV program, SV voucher holders may enter into an initial lease that is for less than 12 months, regardless of the PHA policy in Section 9-I.E., Term of Assisted Tenancy.

Portability

The normal HCV portability procedures and requirements outlined in Chapter 10 generally apply to SVs. Exceptions are addressed below.

- Under SV, 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.

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- A receiving PHA cannot refuse to assist an incoming SV family, regardless of whether the PHA administers SVs under its own ACC.
- If the SV family moves under portability to another PHA that administers SVs under its own ACC:
 - The receiving PHA may only absorb the incoming SV family with an SV (assuming it has an SV voucher available to do so).
 - If the PHA does not have an SV available to absorb the family, it must bill the initial PHA. The receiving PHA must allow the family to lease the unit with SV 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 SV assistance, the SV administration of the voucher is in accordance with the receiving PHA's SV policies.
- If the SV family moves under portability to another PHA that does not administer SVs 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, the initial PHA must inform the family how portability may impact the special SV services and assistance that may be available to the family.

The initial PHA is required to help facilitate the family's portability move to the receiving PHA and inform the family of this requirement in writing, taking reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP).

HACP Policy:

HACP does not participate in this program. N/A - In addition to following PHA policy on briefings in Chapter 5, as part of the briefing packet for SV families, the PHA will include a written notice that the PHA will assist the family with moves under portability.

For limited English proficient (LEP) applicants, the PHA will provide interpretation services in accordance with the PHA's LEP plan (See Chapter 2).

19-VI.G. PAYMENT STANDARDS

Overview

19-13

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For the SV program, HUD has waived the regulation requiring a single payment standard for each unit size. Instead, the PHA may, but is not required to, establish separate higher payment standards for SVs. Lower SV payment standards are not permitted. If the PHA is increasing the regular HCV payment standard, the PHA must also increase the SV payment standard if it would be otherwise lower than the new regular HCV payment standard. The separate SV payment standard must comply with all other HCV requirements with the exception of the alternative requirements discussed below.

Further, if the PHA chooses to establish higher payments standards for SVs, 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. The PHA may establish an exception payment standard up to 120 percent (as opposed to 110 percent) of the HUD published Small Area FMR for that ZIP code area. The exception payment standard must apply to the entire ZIP code area.

HACP Policy:

HACP does not participate in this program. N/A - The PHA will not establish a higher payment standard amount for SVs. The PHA will use the same payment standards for HCV and SV.

All rent reasonableness requirements apply to SV units, regardless of whether the PHA has established an alternative or exception SV payment standard.

Increases in Payment Standards

The requirement that the PHA apply increased payment standards at the family's first regular recertification on or after the effective date of the increase does not apply to SV. The PHA may, but is not required to, establish an alternative policy on when to apply the increased payment standard, 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.

HACP Policy:

HACP does not participate in this program. N/A - The PHA will not establish an alternative policy for increases in the payment standard. PHA policy in Section 11-III.B. governing increases in payment standards will

apply to SVs.

19-VI.H. PROJECT-BASED UNITS

All tenant-based SV awards can be converted to Project-Based Vouchers (PBV) at any time after award without HUD approval provided all the established PBV regulations and requirements are followed.

All PBV requirements in 24 CFR Part 983 and in Chapter 17 apply to project-based SVs with the exception of 24 CFR 983.251(c)(1), which requires PHAs to select families for project-based units from its HCV or PBV waiting list. HUD is waiving this requirement and establishing an alternative requirement that PHAs receive SV referrals from CoC partners for vouchers as well as project-based assistance.

EXHIBIT 19-1: SAMPLE STABILITY VOUCHER (SV)
HOMELESS PROVIDER'S CERTIFICATION

Stability Voucher (SV)
HOMELESS CERTIFICATION

SV Applicant Name:

—

☐ Household without dependent children (complete one form for each adult in the household)

☐ Household with dependent children (complete one form for household)

Number of persons in the household: _____

This is to certify that the above named individual or household meets the following criteria based on the check mark, other indicated information, and signature indicating their current living situation

Check only one box and complete only that section

Living Situation: place not meant for human habitation (e.g., cars, parks, abandoned buildings, streets/sidewalks)

☐ The person(s) named above is/are currently living in (or, if currently in hospital or other institution, was living in immediately prior to hospital/institution admission) a public or private place not designed for, or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus station, airport, or campground.

Description of current living situation:

Homeless Street Outreach Program Name:

This certifying agency must be recognized by the local Continuum of Care (CoC) as an agency that has a program designed to serve persons living on the street or other places not meant for human habitation. Examples may be street outreach workers, day shelters, soup kitchens, Health Care for the Homeless sites, etc.

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Authorized Agency Representative Signature:

Date: _____

Living Situation: Emergency Shelter

- ☐ The person(s) named above is/are currently living in (or, if currently in hospital or other institution, was living in immediately prior to hospital/institution admission) a supervised publicly or privately operated shelter as follows:

Emergency Shelter Program Name:

This emergency shelter must appear on the CoC's Housing Inventory Chart submitted as part of the most recent CoC Homeless Assistance application to the U.S. Department of Housing and Urban Development (HUD) or otherwise be recognized by the CoC as part of the CoC inventory (e.g., newly established Emergency Shelter).

Authorized Agency Representative Signature:

Date: _____

Living Situation: Recently Homeless

- ☐ The person(s) named above is/are currently receiving financial and supportive services for persons who are homeless. Loss of such assistance would result in a return to homelessness (e.g., households in rapid rehousing programs, residents of permanent supportive housing programs participating in Moving On, etc.)

Authorized Agency Representative Signature:

Date: _____

This referring agency must appear on the CoC's Housing Inventory Chart submitted as part of the most recent CoC Homeless Assistance application to HUD or otherwise be recognized by the CoC as part of the CoC inventory.

Immediately prior to entering the household's current living situation, the person(s) named above was/were residing in:

- ☐ Emergency shelter OR ☐ A place unfit for human habitation

Authorized Agency Representative Signature:

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Date:

EXHIBIT 19-2: SAMPLE VICTIM SERVICE PROVIDER'S CERTIFICATION

Stability Voucher (SV)

**SAMPLE CERTIFICATION FOR SURVIVORS OF DOMESTIC VIOLENCE,
DATING VIOLENCE, SEXUAL ASSAULT, STALKING, AND/OR HUMAN
TRAFFICKING**

Use of this Optional Form:

Service providers may utilize this form to certify a family's eligibility for SV to document households who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, and/or human trafficking. In response to this request, the service provider may complete this form and submit it to the Public Housing Agency (PHA) to certify eligibility for the U.S. Department of Housing and Urban Development's (HUD) Stability Voucher program.

Confidentiality:

All information provided during the referral process concerning the incident(s) of domestic violence, dating violence, dating violence, sexual assault, stalking, and human trafficking shall be kept confidential and such details shall not be entered into any shared database. Employees of the PHA will not have access to these details, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED ON BEHALF OF SURVIVORS OF DOMESTIC
VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, AND/OR
HUMAN TRAFFICKING**

SV Applicant Name:

The applicant named above is a survivor of (please check from the list all that apply):

☐ Domestic Violence

☐ Dating Violence

☐ Sexual Assault

☐ Stalking

☐ Human Trafficking

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This certifies that the above named individual or household meets the definition for persons who are fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking and/or human trafficking as these terms are defined under 34 U.S.C. Section 12291 of the Violence Against Women Act¹ and 22 U.S.C. Section 7102(11) of the Trafficking Victims Protection Act.²

I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Authorized Agency Representative Signature:

Date: _____

1 The Violence Against Women Act protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

2 The Victims of Trafficking and Violence Protection Act of 2000 provides assistance to victims of trafficking making housing, educational health care, job training and other federally-funded social service programs available to assist victims in rebuilding their lives.

EXHIBIT 19-3: SAMPLE SV MEMORANDUM OF UNDERSTANDING¹

** This sample document demonstrates the Memorandum of Understanding requirements for the administration of Stability Vouchers. Unless otherwise noted, all elements are required. **]

Memorandum of Understanding – Stability Vouchers

This Memorandum of Understanding (MOU) has been created and entered on [insert execution date] by [insert PHA name and address] and [insert CoC/VSP name and address].

I. Introduction and Goals

The [insert PHA name] and [insert CoC/VSP name] through the Stability Voucher (SV) Program seek to prevent and end homelessness among individuals and families who are experiencing or at-risk of homelessness, those fleeing or attempting to flee domestic violence dating violence, sexual assault, stalking, and human trafficking, and veterans and families that include a veteran family member that meets one of the proceeding criteria.

The Consolidated Appropriations Act, 2021 (Public Law 116-260) (2021 Act), makes available \$43,343,000 for new incremental voucher assistance under Section 8(o) of the United States Housing Act of 1937 for use by individuals and families experiencing or at-risk of homelessness; those fleeing or attempting to flee domestic violence, dating violence, sexual assault, and stalking; and veterans and families that include a veteran family member that meets one of the proceeding criteria.

The Further Consolidated Appropriations Act, 2022 (Public Law 117-103 (2022 Act) further provides that HUD may waive certain statutory and regulatory provisions to administer the SVs (except for requirements related to tenant rights and protections, rent setting, fair housing, nondiscrimination, labor standards and the environment) upon a finding that any such waivers or alternative requirements are necessary to facilitate the use of funds made available for SVs.

This Memorandum of Understanding (MOU) outlines the collaboration and commitment between [insert PHA name] and [insert CoC/VSP name] to pair Stability Vouchers with CoC-funded supportive services; and to collaborate with the CoC/VSP and other stakeholders to develop a prioritization plan for these

¹ If PHA policy in Section 19-VI.B. of this administrative plan states that a copy of the MOU will be attached at the end of this chapter as Exhibit 19-3, you may either fill in the language shown here or replace the text with the PHA's own MOU, then delete the word *sample*. If the PHA does not wish to attach its own MOU to the chapter, this statement should be removed from the policy in Section 19-VI.B.

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vouchers.

Lead Agency Liaisons:

Name and title of PHA staff position:

Name and title CoC and/or VSP staff position:

II. Individuals and Families Eligibility under the Qualifying Categories

In order to be eligible for an SV, an individual or family must meet one of four eligibility categories:

- Homeless
- At risk of homelessness
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking
- Veterans

III. SV Roles and Responsibilities

A. PHA Roles and Responsibilities [**The following responsibilities are listed for example purposes. **]

1. Coordinate and consult with the CoC in developing the services and assistance to be offered under the SV services fee.
2. Accept direct referrals for eligible individuals and families through the CoC Coordinated Entry System.
3. Commit a sufficient number of staff and necessary resources to ensure that the application, certification, and voucher issuance processes are completed in a timely manner.
4. Commit a sufficient number of staff and resources to ensure that inspections of units are completed in a timely manner.
5. Designate a staff to serve as the lead SV liaison.
6. Comply with the provisions of this MOU.

B. CoC Roles and Responsibilities [**The following responsibilities are listed for example purposes. **]

1. Designate and maintain a lead SV liaison to communicate with the PHA.
2. Refer eligible individuals and families to PHA using the community's coordinated entry system.
3. Support eligible individuals and households in completing and applying for supportive documentation to accompany admissions application to the PHA (i.e., self-certifications, birth certificate, social security card, etc.).
4. Attend SV participant briefings when needed.

5. Assess all households referred for SV for mainstream benefits and supportive services available to support eligible individuals and families through their transition.
6. Identify and provide supportive services to SV families. (While SV participants are not required to participate in services, the CoC should assure that services are available and accessible.)
7. Comply with the provisions of this MOU.

IV. CoC-funded supportive services that will be paired with SVs

CoCs are encouraged to outline any existing partnerships with health and behavioral health care providers and agencies, state Medicaid agencies and agencies and organizations that may be leveraged to provide ongoing tenancy and wrap-around supportive services for those that may benefit from such services to maintain housing stability. All services provided by the CoC must be outlined in the MOU with the CoC and should demonstrate the community's strategy to coordinate assistance through available resources. HUD recommends that PHAs and partnering CoCs seek a diverse range of supportive services by partnering with organizations trusted by people experiencing homelessness.

V. PHA Adopted Waivers and Alternative Requirements

Notice PIH 2022-24 provides [insert PHA name] with authority to adopt certain statutory and regulatory requirements and alternative requirements for Stability Vouchers. [insert PHA name] and [insert CoC/VSP name] have agreed to adopt the following waivers and alternative requirements:

[List all waivers and alternative requirements discussed, agreed upon by the PHA and CoC for the administration of SVs]

VI. PHA Permissive Prohibition Policies agreed upon by the PHA and CoC

[Insert PHA name] in consultation with [insert CoC/VSP name] have agreed to adopt the following permissive prohibitions for the Stability Voucher program:

[List any permissive prohibition policies agreed upon by the PHA and CoC]

VII. Program Evaluation

[Insert PHA name] and [insert CoC /VSP] agree to cooperate with HUD, provide requested data to HUD or HUD-approved contractor delegated the responsibility of program evaluation protocols established by HUD or HUD-approved contractor.

Signed By:

Public Housing Agency Executive Director _____ Date

CoC/VSP Executive Director _____

Housing Authority of the City of Pittsburgh

End
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Administrative Plan

GLOSSARY

A. ACRONYMS USED IN THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

~~**AAF** – Annual Adjustment Factor (published by HUD in the Federal Register and used to compute annual rent adjustments)~~

ACC Annual Contributions Contract

ADA Americans with Disabilities Act of 1890

AIDS Acquired immune deficiency syndrome.

BR Bedroom

CDBG Community Development Block Grant (Program)

CES Coordinated Entry System

CFR Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)

CoC Continuum of Care

CPI Consumer price index (published monthly by the Department of Labor as an inflation indicator)

RAD Rental Assistance Demonstration Program

EHV Emergency Housing Vouchers

~~**EID** Earned income disallowance.~~

EIV Enterprise Income Verification

EV – Enhanced Voucher

FDIC Federal Deposit Insurance Corporation

FHA Federal Housing Administration (HUD Office of Housing)

FHEO Fair Housing and Equal Opportunity (HUD Office of)

FICA Federal Insurance Contributions Act (established Social Security taxes)

FMR Fair Market Rent

FR Federal Register

FSS Family Self-Sufficiency (Program)

FY Fiscal year

FYE Fiscal year end

GAO Government Accountability Office

GR Gross rent

HA Housing Authority or housing agency.

HAP Housing Assistance Payment

HCV Housing choice voucher

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HQSHIP Housing ~~quality standards~~ Information Portal

HOTMA Housing Opportunity through Modernization Act of 2016

HQS – Housing Quality Standards

NSPIRE National Standards for the Physical Inspection of Real Estate

HUD Department of Housing and Urban Development

HUDCLIPS HUD Client Information and Policy System

IPA Independent public accountant

IRA Individual retirement account

IRS Internal Revenue Service

IVT Income Validation Tool

JTPA Job Training Partnership Act

LBP Lead-based paint

LEP Limited English Proficiency

MSA Metropolitan statistical area (established by the U.S. Census Bureau)

MS5 Mainstream Vouchers

MTCS Multi-family Tenant Characteristics System (now the Form HUD-50058 submodule of the PIC system)

MTW Moving to Work

NOFA Notice of funding availability

NSPIRE National Standards for the Physical Inspection of Real Estate

OGC HUD's Office of General Counsel

OIG HUD's Office of Inspector General

OMB Office of Management and Budget

PASS Plan to Achieve Self-Support

PBV Project-based voucher

PHA Public housing agency

PIC PIH Information Center

PIH (HUD Office of) Public and Indian Housing

PS Payment standard

QC Quality control

RAD Rental Assistance Demonstration Program

REAC (HUD) Real Estate Assessment Center

RFP Request for proposals

RFTA Request for tenancy approval

RVI Remote Video Inspection

RIGI Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)

SEMAP Section 8 Management Assessment Program

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SRO Single room occupancy

SSA Social Security Administration

SSI Supplemental security income

SWICA State wage information collection agency

TANF Temporary assistance for needy families

TPV Tenant protection vouchers

TR Tenant ~~rent~~Rent

TTP Total tenant payment UA Utility allowance

UFAS Uniform Federal Accessibility Standards

UIV Upfront income verification

URP Utility reimbursement payment

VASH Veterans Affairs Supportive Housing

VAWA Violence Against Women ~~Reauthorization Act of 2013~~

VCA Voluntary Compliance Agreement

VMS Voucher Management System

GLOSSARY OF SUBSIDIZED HOUSING TERMS:

Absorption. In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

Accessible. The facility or portion of the facility can be approached, entered, and used by persons with disabilities.

Adjusted income. Annual income, less allowable HUD deductions and allowances.

Administrative fee. Fee paid by HUD to the PHA for administration of the program. See §982.152.

Administrative plan. The plan ~~that~~ describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA's board and included as a supporting document to the PHA Plan. See §982.54.

Admission. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

Affiliated individual. With respect to an individual, a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis (in the place of a parent), or any individual, tenant, or lawful occupant living in the household of that individual.

Amortization payment. In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.

Annual. Happening once a year.

Annual Contributions Contract (ACC). The written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1837 Act, and the PHA agrees to comply with HUD requirements for the program.

Annual income. ~~The anticipated total income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations~~All amounts not specifically excluded in 24 CFR 5.609(b), received from all sources by each member of the

family who is 18 years of age or older or is the head of household, spouse or cohead, plus unearned income by or on behalf of each dependent who is under 18 years of age.

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Applicant (applicant family). A family that has applied for admission to a program but is not yet a participant in the program.

Area exception rent. An amount that exceeds the published FMR. See 24 CFR 982.504(b).

As-paid states. States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

Assets. (See *net family assets*.)

Auxiliary aids. Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving federal financial assistance.

Biennial. Happening every two years.

Bifurcate. With respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

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 the PHA over the ACC term of the funding increment.

Child. A member of the family other than the family head or spouse who is under 18 years of age.

Childcare expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further their 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~~childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

Citizen. A citizen or national of the United States.

Cohead. An individual in the household who is equally responsible for the lease with the head of household. A family may have a cohead or spouse but not both. A cohead never qualifies as a dependent. The cohead must have legal capacity to enter into a lease.

Common space. In shared housing, the space available for use by the assisted family and other occupants of the unit.

Computer match. The automated comparison of databases containing records about individuals.

Confirmatory review. An on-site review performed by HUD to verify the management performance of a PHA.

Consent form. Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the [HQSN SPIRE](#) for congregate housing. A special housing type: see 24 CFR 982.606–609.

Contiguous MSA. In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

Continuously assisted. An applicant is continuously assisted under the 1837 Act if the family is already receiving assistance under any 1837 Housing Act program when the family is admitted to the voucher program.

Contract authority. The maximum annual payment by HUD to a PHA for a funding increment.

Cooperative (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type (see 24 CFR 982.618).

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

Day laborer. An individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future.

De minimis error. An error that results in a difference in the determination of a family's adjusted income of \$30 or less per month.

Dependent. A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Dependent child. In the context of the student eligibility restrictions, a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* as specified above.

Disability assistance expenses. Reasonable expenses that when combined with health and medical care expenses, exceed 10 percent of annual income and are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member, and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Disabled family. A family whose head, cohead, spouse, or sole member is a person with disabilities; 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*.

Disallowance. Exclusion from annual income.

Displaced family. A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been

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extensively damaged or destroyed as a result of a disaster declared or otherwise
formally recognized pursuant to federal disaster relief laws.

Domestic violence. ~~„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 intimate partner, of the victim under the family or domestic or family~~
~~violence laws of the jurisdiction receiving grant monies, funding, and in the~~
~~case of victim services, includes the user, or by any other person against an~~
~~adult attempted use of physical abuse or youth victim who is protected from~~
~~that person's acts under the domestic sexual abuse, or family violence laws a~~
~~pattern of the jurisdiction, any other coercive behavior committed, enabled, or~~
~~solicited to gain or maintain power and control over a victim, including verbal,~~
~~psychological, economic, or technological abuse that may or may not~~
~~constitute criminal behavior, by a person who is:~~

- The current or former spouse or intimate partner of the victim, or person
similarly situated to a spouse or intimate partner of the victim.
- A person who is cohabitating or has cohabitated with the victim as a
spouse or intimate partner.
- A person with whom the victim shares a child in common.
- A person who commits acts against a youth or adult victim who is protected
from those 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, or use
of a drug, or the possession of a drug with intent to manufacture, sell, distribute,
or use the drug.

Earned income. Income or earnings from wages, tips, salaries, other employee
compensation, and net income from self-employment. Earned income does
not include any pension or annuity, transfer payments (meaning payments
made or income received in which no goods or services are being paid for,
such as welfare, social security, and governmental subsidies for certain
benefits), or any cash or in-kind benefits.

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,

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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, cohead, spouse, or sole member is a person who is at least 62 years of age; two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

Elderly person. An individual who is at least 62 years of age.

Eligible family A family that is income eligible and meets the other requirements of the 1837 Act and Part 5 of 24 CFR. See also *family*.

Employer Identification Number (EIN). The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

Evidence of citizenship or eligible status. The documents which must be submitted as evidence of citizenship or eligible immigration status. See 24 CFR 5.508(b).

Extremely low-income family. A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher. Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. See 24 CFR 5.603.

~~**Facility.** All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock, or other real or personal property or interest in the property.~~

Fair Housing Act. Title VIII of the Civil Rights Act of 1868, as amended by the Fair Housing Amendments Act of 1888.

Fair Market Rent (FMR). The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the *Federal Register* in accordance with 24 CFR Part 888.

Family. Includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, and can be further defined in PHA policy.

~~-Family includes a single person, who may be:~~

- ~~- An elderly person, displaced person, disabled person, near-elderly person, or any other single person;~~
- ~~- An otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or~~

~~Family also includes a group of persons residing together, and such group includes, but is not limited to:~~

- ~~- A family with or without children (the temporary absence of a child who is temporarily away from the home due to because of placement in foster care is not considered in determining a member of the family composition and);~~

~~- An elderly family size);~~

~~- An A near-elderly family or a near-elderly;~~

~~- A disabled family;~~

~~- A displaced family; and~~

~~-The remaining member of a tenant family~~

- ~~- A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.~~

Family rent to owner. In the voucher program, the portion of rent to owner paid by the family.

Family Self-Sufficiency program (FSS program). The program established by a PHA within its jurisdiction to promote self-sufficiency among participating families, including the coordination of supportive services to these families (24 CFR 984.103).

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see 24 CFR 982.515(a).

Family unit size. The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

Federal agency. A department of the executive branch of the federal government.

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Foster adult. A member of the household who is 18 years of age or older and meets the definition of a foster adult under state law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition, and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

Foster child. A member of the household who meets the definition of a foster child under state law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

Foster childcare payment. A 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). See 24 CFR 5.603.

Funding increment. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

Gender identity. Actual or perceived gender-related characteristics.

Gross Contract Rent. The sum of the rent to owner plus any utility allowance.

Group home. A dwelling unit that is licensed by a state as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). (A special housing type: see 24 CFR 982.610–614.)

Handicap. Any condition or characteristic that renders a person an individual with handicaps. (See *person with disabilities*.)

HAP Contract. The housing assistance payments contract. A written contract between the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Health and medical care expenses. Any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.

Household. A household includes additional people other than the family who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

Housing assistance payment. The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the

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family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

Housing Agency (HA). See *public housing agency*.

~~**Housing quality standards**~~**Quality Standards (HQS).** The HUD minimum quality standards for housing assisted under the voucher program, Soon to be replaced by NSPIRE.

HUD. The U.S. Department of Housing and Urban Development.

Human trafficking. A crime involving the exploitation of a person for labor, services, or commercial sex. The Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations recognize and define two primary forms of human trafficking:

- Sex trafficking is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age. See 22 U.S.C. § 7102(11)(A).
- Forced labor is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. See 22 U.S.C. § 7102(11)(B).

~~**Imputed asset.**~~ An asset disposed of for less than fair market value during the two years preceding examination or reexamination.

~~**Imputed asset income.**~~ The PHA-established passbook rate multiplied by the total cash value of assets. The calculation is used when net family assets exceed \$5,000.

Imputed welfare income. An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction but is included in the family's annual income and therefore reflected in the family's rental contribution.

~~**Income.**~~ Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

Income for eligibility. Annual income.

Income information means information relating to an individual's income, including:

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- All employment income information known to current or previous employers or other income sources.
- All information about wages, as defined in the state's unemployment compensation law, including any social security number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, employer identification number of an employer reporting wages under a state unemployment compensation law.
- Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period receive.
- Unearned IRS income and self-employment, wages, and retirement income.
- Wage, social security, and supplemental security income data obtained from the Social Security Administration.

Independent contractor. An individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.

Individual with handicaps. *See person with disabilities.*

Inflationary index. An index based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) used to make annual adjustments to the deduction for elderly disabled families, the cap for imputing returns on assets, the restriction on net family assets, the amount of net assets the PHA may determine based on self-certification by the family, and the dependent deduction.

Initial PHA. In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

Initial payment standard. The payment standard at the beginning of the HAP contract term.

Initial rent to owner. The rent to owner at the beginning of the HAP contract term.

Inside. Under NSPIRE, the inside of HUD housing (or "inside areas") refers to the common areas and building systems that can be generally found within the building interior and are not inside a unit. Examples of "inside" common areas may include, basements, interior or attached garages, enclosed

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carports, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls, corridors, stairs, shared kitchens, laundry rooms, offices, enclosed porches, enclosed patios, enclosed balconies, and trash collection areas. Examples of building systems include those components that provide domestic water such as pipes, electricity, elevators, emergency power, fire protection, HVAC, and sanitary services.

Institution of higher education. An institution of higher education as defined in 20 U.S.C. 1001 and 1002. See Exhibit 3-2 in this Administrative Plan.

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Jurisdiction. The area in which the PHA has authority under state and local law to administer the program.

Landlord. Either the owner of the property or their representative, or the managing agent or their representative, as shall be designated by the owner.

Lease. A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

Life Threatening deficiency. Under NSPIRE, the life-threatening category includes deficiencies that, if evident in the home or on the property, present a high risk of death or severe illness or injury to a resident.

Live-in aide. A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

- Is determined to be essential to the care and well-being of the persons.
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

Living/sleeping room. A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space. A bedroom or living/sleeping room must have at least one window and two electrical outlets in proper operating condition. See HCV GB p. 10-6 and 24 CFR 982.401.

Local preference. A preference used by the PHA to select among applicant families.

Low deficiency. Under NSPIRE, deficiencies critical to habitability but not presenting a substantive health or safety risk to resident.

Low-income family. A family whose income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments for smaller

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or larger families, except that HUD may establish income limits higher or lower than 80 percent for areas with unusually high or low incomes.

Manufactured home. A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence and meets the HQS NSPIRE. (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.

~~**Medical expenses.** Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance (a deduction for elderly or disabled families only). These allowances are given when calculating adjusted income for medical expenses in excess of 3 percent of annual income.~~

Minor. A member of the family household other than the family head or spouse, who is under 18 years of age.

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

Moderate deficiency. Under NSPIRE, this includes deficiencies that, if evident in the home or on the property, present a moderate risk of an adverse medical event requiring a healthcare visit; cause temporary harm; or if left untreated, cause or worsen a chronic condition that may have long-lasting adverse health effects; or that the physical security or safety of a resident or their property could be compromised.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Mutual housing. Included in the definition of *cooperative*.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

National Standards for the Physical Inspection of Real Estate. (NSPIRE) HUD's housing inspection approach. NSPIRE is a single inspection standard for all units under the Public Housing, HCV, Multifamily, and Community Planning and Development (CPD) programs. NSPIRE's focus is on the areas that impact residents the most, such as the dwelling unit.

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Near-elderly family. A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

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

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

~~- In determining net family assets, PHAs or owners, as applicable, shall~~ **must** 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~~ therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives **important** consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

Noncitizen. A person who is neither a citizen nor national of the United States.

Notice Of Funding Availability (NOFA). For budget authority that HUD distributes by competitive process, the *Federal Register* document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

Office of General Counsel (OGC). The General Counsel of HUD.

Outside. Under NSPIRE, outside of HUD housing (or "outside areas") refers to the building site, building exterior components, and any building systems located outside of the building or unit. Examples of "outside" components may include fencing, retaining walls, grounds, lighting, mailboxes, project signs, parking lots, detached garage or carport, driveways, play areas and equipment, refuse disposal, roads, storm drainage, non-dwelling buildings,

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Housing Authority of the City of Pittsburgh

and walkways. Components found on the exterior of the building are also considered outside areas, and examples may include doors, attached porches, attached patios, balconies, car ports, fire escapes, foundations, lighting, roofs, walls, and windows.

Overcrowded. A unit that does not ~~meet the following HQS space standards: (1) Provide adequate space and security for the family; and (2) Have~~have at least one bedroom or living/sleeping room for each two persons.

Owner. Any person or entity with the legal right to lease or sublease a unit to a participant.

PHA Plan. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

PHA's quality control sample. An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

Participant (participant family). A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

Payment standard. The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

Person with disabilities. *For the purposes of program eligibility.* A person who has a disability as defined under the Social Security Act or Developmental Disabilities Care Act, or a person who has a physical or mental impairment expected to be of long and indefinite duration and whose ability to live independently is substantially impeded by that impairment but could be improved by more suitable housing conditions. This includes persons with AIDS or conditions arising from AIDS but excludes persons whose disability is based solely on drug or alcohol dependence. *For the purposes of reasonable accommodation.* A person with a physical or mental impairment that substantially limits one or more major life activities, a person regarded as having such an impairment, or a person with a record of such an impairment.

Portability. Renting a dwelling unit with a Section 8 housing choice voucher outside the jurisdiction of the initial PHA.

Premises. The building or complex in which the dwelling unit is located, including common areas and grounds.

~~**Previously unemployed.** With regard to the earned income disallowance, a person with disabilities who has earned, in the 12 months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.~~

Private space. In shared housing, the portion of a contract unit that is for the exclusive use of an assisted family.

~~**Processing entity.** The person or entity that, under any of the programs covered, is responsible for making eligibility and related determinations and any income reexamination. In the HCV program, the "processing entity" is the "responsible entity."~~

Project owner. The person or entity that owns the housing project containing the assisted dwelling unit.

Public assistance. Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by federal, state, or local governments.

Public housing agency (PHA). Any state, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1837 Act.

~~**Qualified family** (under the earned income disallowance). A family participating in an applicable assisted housing program or receiving HCV assistance:~~

- ~~– Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;~~
- ~~– Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or~~
- ~~– Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as~~

~~one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least \$500.~~

Qualified census tract. With regard to certain tax credit units, any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent, and where the census tract is designated as a qualified census tract by HUD.

Real property. Real property has the same meaning as that provided under the law of the state in which the property is located.

Reasonable rent. A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

Reasonable accommodation. A change, exception, or adjustment to a rule, policy, practice, or service to allow a person with disabilities to fully access the PHA's programs or services.

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 it is called *reexamination*. The process of securing documentation of total family income is used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported.

Remaining member of the tenant family. The person left in assisted housing who may or may not normally qualify for assistance on their own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

Rent to owner. The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance, and utilities that the owner is required to provide and pay for.

Residency preference. A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (See *residency preference area*).

Residency preference area. The specified area where families must reside to qualify for a residency preference.

Housing Authority of the City of Pittsburgh

Responsible entity. For the public housing and the Section 8 tenant-based assistance, project-based voucher assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

Secretary. The Secretary of Housing and Urban Development.

Section 8. Section 8 of the United States Housing Act of 1937.

Section 8 covered programs. All HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8 assisted housing for which loans are made under Section 202 of the Housing Act of 1959.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended.

Section 214 covered programs. The collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in 24 CFR 5.500.

Security deposit. A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

Seasonal worker. An individual who is hired into a short-term position and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry.

Set-up charges. In a manufactured home space rental, charges payable by the family for assembling, skirting, and anchoring the manufactured home.

Severe deficiency. Under NSPIRE, the severe category includes deficiencies that, if evident in the home or on the property, present a high risk of permanent disability, or serious injury or illness, to a resident; or the physical security or safety of a resident or their property would be seriously compromised.

Sexual assault. Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent (42 U.S.C. 13925(a)).

Sexual orientation. Homosexuality, heterosexuality or bisexuality.

Shared housing. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. (A special housing type: see 24 CFR 982.615–982.618.)

Single person. A person living alone or intending to live alone.

Single Room Occupancy housing (SRO). A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. (A special housing type: see 24 CFR 982.602–982.605.)

Small rural public housing agency (PHA). Section 38 defines the term “small public housing agency” as a public housing agency “for which the sum of the number of public housing dwelling units administered by the agency and the number of vouchers under section 8(o) administered by the agency is 550 or fewer” and “that predominantly operates in a rural area, as described in section 1026.35(b)(2)(iv)(A) of title 12, Code of Federal Regulations.” After consideration of the public comments discussed above, HUD is interpreting “predominantly operates in a rural area” to mean a small PHA that:

- (1) Has a primary administrative building with a physical address in a rural area as described in 12 CFR 1026.35(b)(2)(iv)(A); or
- (2) more than 50 percent of its combined public housing units and voucher units under section 8(o) are in rural areas as described in 12 CFR 1026.35(b)(2)(iv)(A). HUD also clarifies that voucher units under section 8(o) include those in the tenant-based Housing Choice Voucher (HCV) program and the Project-Based Voucher (PBV) program.

Social Security Number (SSN). The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

Special admission. Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

Special housing types. See subpart M of part 982. Subpart M states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

Specified welfare benefit reduction. Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution.

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A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

Spouse. The marriage partner of the head of household.

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

State wage information collection agency (SWICA). The state agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the state, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

Subsidy standards. Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

Suspension. The term on the family's voucher stops from the date the family submits a request for PHA approval of the tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied. This practice is also called *tolling*.

Tax credit rent. With regard to certain tax credit units, the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Technological abuse. An act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:

- Internet enabled devices
- Online spaces and platforms
- Computers
- Mobile devices

- Cameras and imaging programs
- Apps
- Location tracking devices
- Communication technologies
- Any other emergency technologies

Tenancy addendum. For the housing choice voucher program, the lease language required by HUD in the lease between the tenant and the owner.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant rent to owner. See *family rent to owner*.

Term of lease. The amount of time a tenant agrees in writing to live in a dwelling unit.

Total tenant payment (TTP). The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

~~Unit.~~ ~~Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero (0) bedrooms to six (6) bedrooms.~~

~~Unearned income.~~ ~~Any annual income, as calculated under 24 CFR 5.609, that is not earned income.~~

~~Unit.~~ ~~Under NSPIRE, a unit (or "dwelling unit") of HUD housing refers to the interior components of an individual unit. Examples of components included in the interior of a unit may include the balcony, bathroom, call-for-aid (if applicable), carbon monoxide devices, ceiling, doors, electrical systems, enclosed patio, floors, HVAC (where individual units are provided), kitchen, lighting, outlets, smoke detectors, stairs, switches, walls, water heater, and windows.~~

Utilities. Water, electricity, gas, other heating, refrigeration, cooking fuels, trash collection, and sewage services. Telephone service is not included.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. In the voucher program, the portion of the housing assistance payment ~~which~~that exceeds the amount of rent to owner.

Utility hook-up charge. In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

Very low-income family. A low-income family whose annual income does not exceed 50 percent 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 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

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 therefrom under conditions other than dishonorable.

Violence Against Women ~~Reauthorization Act (VAWA) of 2013.~~ Prohibits denying admission to the program to an otherwise qualified applicant or terminating assistance on the basis that the applicant or program participant is or has been a victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking.

Violent criminal activity. Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

Voucher (housing choice voucher). A document issued by a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

Voucher holder. A family holding a voucher with an unexpired term (search time).

Voucher program. The housing choice voucher program.

Waiting list. A list of families organized according to HUD regulations and PHA policy who are waiting for a unit to become available.

Waiting list admission. An admission from the PHA waiting list.

Welfare assistance. Income assistance from federal or state welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, ~~child-care~~childcare or other services for working families. For the FSS program (24 CFR 984.103), *welfare assistance* includes only cash maintenance payments designed to meet a family's ongoing basic needs.

Does not include nonrecurring short term benefits designed to address individual crisis situations, work subsidies, supportive services such as ~~child-care~~childcare and transportation provided to families who are employed, refundable earned income tax credits, contributions to and distributions from Individual Development Accounts under TANF, services such as counseling, case management, peer support, ~~child-care~~childcare information and referral, financial empowerment, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support, amounts solely directed to meeting housing expenses, amounts for health care, Supplemental Nutrition Assistance Program (SNAP) and emergency rental and utilities assistance, SSI, SSDI, or social security, and child-only or non-needy TANF grants made to or on behalf of a dependent child solely on the basis of the child's need and not the need of the child's current non-parental caretaker.

END OF GLOSSARY

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**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Chair and Governing Board Members

FROM: Garrett Evans, Executive Director

SUBJECT: Adoption of a Housing Authority Resolution Amending the Fiscal Year 2023-24 Budget Based on Year-End Revenue and Expenditure Projections

MEETING DATE: April 15, 2024

EXECUTIVE SUMMARY

Staff has completed a Mid-Year Review of the Fiscal Year 2023-24 budget and has determined that budget adjustments are needed to meet year-end projections.

FISCAL IMPACT

The proposed amendments to the Housing Authority of the City of Pittsburg (Housing Authority) Budget for Fiscal Year 2023-24 includes an increase of \$190,444 in revenue appropriations and a decrease of \$96,965 in expenditure appropriations.

RECOMMENDATION

The Governing Board of the Housing Authority adopt this Resolution amending the Fiscal Year 2023-24 Budget based on year-end revenue and expenditure projections.

BACKGROUND

The Fiscal Year 2023-24 Budget was approved by the Housing Authority Board on June 19, 2023. The Budget was developed based upon information available at that time regarding anticipated revenue and expenditures for the period from July 1, 2023, through June 30, 2024. Upon completion of the first six months during the fiscal year, staff reviewed the initial Housing Authority budget to identify any adjustments needed to revenue and expenditure projections.

SUBCOMMITTEE FINDINGS

The proposed amendments to the Housing Authority Budget were not discussed in a subcommittee.

STAFF ANALYSIS

The table below provides an overview of projected Housing Authority revenue and expenditures for the 2023-24 fiscal year.

HOUSING AUTHORITY (FUND 241) FISCAL YEAR 2023-24					
	FY 2023-24 Council Adopted	FY 2023-24 Budget Adjustments	FY 2023-24 Amended Budget	FY 2023-24 Mid-Year Revised Budget	FY 2023-24 Mid-Year Changes
REVENUE					
HUD Housing Authority	\$20,131,092		\$20,131,092	\$20,131,092	\$ -
Port- In Revenue	960,000		960,000	960,000	-
HUD Administrative Fees	1,518,492		1,518,492	1,699,870	181,378
Other Service Charges	2,171		2,171	2,171	-
Fraud Recovery	3,751		3,751	12,817	9,066
Rental Income	211,500		211,500	211,500	-
Partnership Income	129,478		129,478	129,478	-
Transfer In From SA Housing 248	55,000		55,000	55,000	-
TOTAL REVENUE	\$23,011,484	\$ -	\$23,011,484	\$23,201,928	\$ 190,444
EXPENDITURES					
Salaries and Benefits	1,162,634	-	1,162,634	1,162,634	-
Supplies/Computer Expense	80,800		80,800	80,800	-
Utilities	27,250		27,250	30,350	3,100
Building/Equipment Rental	28,500		28,500	28,500	-
Housing Assistance Payments	17,925,552		17,925,552	17,925,864	312
Port In Expense	960,000		960,000	960,000	-
Veterans Affairs Supportive Housing Assistance Payments	2,205,228		2,205,228	2,205,228	-
Maintenance Agreements	52,500	7,805	60,305	60,305	-
Other Contractual & Professional Services	134,700	395	135,095	135,095	-
Administrative Overhead	120,079		120,079	120,079	-
Internal Service Funds Allocation Charges	148,153		148,153	138,546	(9,607)
Rental Expenses	68,800		68,800	68,300	(500)
Other Expenses	120,800		120,800	120,800	-
Transfers Out	24,907		24,907	24,907	-
Savings Attrition	-	-	-	(90,000)	(90,000)
TOTAL EXPENDITURES	\$ 23,059,903	\$ 8,200	\$ 23,068,103	\$ 22,971,408	\$ (96,695)
OPERATING SURPLUS/ (SHORTFALL)	\$ (48,419)	\$ (8,200)	\$ (56,619)	\$ 230,520	\$ 287,139

Revenue

The projected revenues for fiscal year 2023-24 are \$23,201,928. As of February 29, 2024, \$16,562,833 or 71% of the annual projected revenues had been received. Staff have projected those revenues for this fiscal year will be \$190,444 over the amended budgeted amount of \$23,011,484. This increase is due to receiving more HUD administrative fees and fraud recovery funds from tenant repayment agreements.

Expenditures

The projected expenditures for fiscal year 2023-24 are \$22,971,408. As of February 29, 2024, \$16,053,013 or 70% of the projected expenditure had been expended. Staff have projected those expenditures for this fiscal year will be \$96,695 under the amended budgeted amount of \$23,068,103. This decrease is due to internal service fund allocation for fleet maintenance and decreases in salary and benefit attrition savings.

Fund Balance

The amended budget assumed an operating loss of \$(56,619) The proposed budget adjustments will create a projected operating income of \$230,520.

ATTACHMENTS: Resolution

Report Prepared By: Laura Mendez, Finance Manager of Reporting

Report Reviewed By: Paul Rodrigues, Finance Director

CITY OF PITTSBURG HOUSING AUTHORITY MEETING MINUTES

DATE: March 18, 2024

LOCATION: Council Chamber, City Hall, 65 Civic Avenue, Pittsburg, CA 94565

CITY COUNCIL.AGENCY MEMBERS

Juan Antonio Banales, Mayor/Chair
Jelani Killings, Vice-Mayor/Chair
Dionne Adams, Council/Agency Member
Angelica Lopez, Council/Agency Member
Shanelle Scales-Preston, Council/Agency Member
S.L. Floyd, Agency Member
Annie Hill Herring, Agency Member

APPOINTED OFFICIALS

Garrett Evans, City Manager/Executive Director
Donna Mooney, City Attorney/Legal Counsel
Alice E. Evenson, City Clerk/Agency Secretary (elected)
Nancy Parent, City Treasurer (elected)

CALL TO ORDER

Chair Banales called the meeting of the Housing Authority to order at 7:02 P.M. in the City Council Chamber at City Hall, 65 Civic Avenue, Pittsburg, California.

ROLL CALL

All members were present.

PUBLIC HEARING

6. Adoption of a Housing Authority Resolution Approving the Public Housing Agency Annual Plan for 2024 and Authorizing the Executive Director to Submit the Public Housing Agency Annual Plan for 2024 to the U.S. Department of Housing and Urban Development.

On Motion by Member Floyd, seconded by Member Herring and adopted unanimously.

CONSENT CALENDAR

On Motion by Member Floyd, seconded by Member Herring and adopted unanimously.

7. Minutes of December 18, 2023.

8. Adoption of a Housing Authority Minute Order Approving an Annual Report Pursuant to SB 341.

HOUSING AUTHORITY MEMBER REMARKS

There were no Housing Authority Member remarks.

ADJOURNMENT

The Housing Authority was adjourned at 8:19 P.M.

Respectfully submitted,

Alice E. Evenson, Secretary



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of City Council, Pittsburg Power Company, Successor Agency for the Redevelopment Agency of the City of Pittsburg Resolutions Amending the Fiscal Year 2023-24 Budget Based on Year End Revenue and Expenditure Projections

MEETING DATE: April 15, 2024

EXECUTIVE SUMMARY

Staff has completed a Mid-Year Review of the Fiscal Year 2023-24 budget and has determined that budget adjustments are necessary to meet year-end projections.

FISCAL IMPACT

The proposed amendments to the City of Pittsburg Operating Budget for Fiscal Year 2023-24 include a decrease of \$9,741,494 in revenue appropriations for all City funds (\$709,042 increase in General Fund revenues, \$10,277,032 decrease in Special Revenues and Debt Service, and a \$173,504 decrease in Internal Service, Enterprise, and Successor Agency revenues). In addition, all Funds are projected to experience an overall decrease in expenditure appropriations of \$14,440,162 over the current amended budget (\$1,908,512 decrease in General Fund expenditures, \$11,832,308 decrease in Special Revenue and Debt Service expenditures, and a \$699,342 decrease in Internal Service, Enterprise, and Successor Agency expenditures). Note, the Capital Project funds (CIP) as well as construction costs associated with Water Operation fund were excluded.

RECOMMENDATION

The City Council, Governing Boards of the Pittsburg Power Company, Successor Agency for the Redevelopment Agency, and the SW Pittsburg Geologic Hazard Abatement District II, approve the resolutions amending the Fiscal Year 2023-24 Budget to reflect anticipated revenues and expenditures for the current fiscal year as detailed in this report.

BACKGROUND

The following Operating Budgets for fiscal year 2023-24 were approved by the respective governing bodies on June 19, 2023:

City of Pittsburgh (City Council Resolution 23-14317)

Pittsburg Power Company (PPC Board Resolution 23-454)

Successor Agency for the City of Pittsburgh Redevelopment Agency (Resolution 23-054)

SW Pittsburgh Geologic Hazard Abatement District II (Resolution 23-084)

The budgets were developed based upon information at the time regarding anticipated revenues and expenditures from the period from July 1, 2023 through June 30, 2024. At the completion of the mid-point of the fiscal year, staff from all departments reviewed their budgets to identify any adjustments required to revenue projections and expenditure appropriations.

The goal of this mid-year analysis is to update the budget to reflect significant budget changes and to develop the financial starting point for development of the Fiscal Year 2024-25 Budget.

There are no proposed changes to expenditure appropriations for the SW Pittsburgh Geologic Hazard Abatement District II.

SUBCOMMITTEE FINDINGS

The proposed budget amendments were reviewed by the Finance Subcommittee on March 15, 2024.

STAFF ANALYSIS

The information below provides an overview of projected revenues and expenditures for those City funds with projected significant variances from the budget as currently adopted.

GENERAL FUND:

	Proposed Amendments		
	Revenue	Expenditure	Net
<u>General Funds</u>			
General Fund	905,042	(1,908,512)	2,813,554
Measure M Fund	\$ (196,000)	\$ -	(196,000)
Total General Funds	\$ 709,042	\$ (1,908,512)	\$ 2,617,554

The chart provides an overview of the major General Fund revenue and expenditure categories. It is projected that Fiscal Year 2023-24 General Fund revenues will exceed the budgeted amount by \$905,042 and that expenditure appropriation adjustments totaling a reduction of \$1,908,512 are required. While the amended budget provided for a General Fund net shortfall of \$11,605,309, it is currently projected that the General Fund will end the fiscal year with a projected net shortfall of \$8,791,755. Note, when excluding the Capital improvements and Project related transfers, the General Fund will end the fiscal year with a projected net surplus of \$1,110,008.

GENERAL FUND REVENUE & EXPENDITURE REPORT					
FISCAL YEAR 2023-24 (2024)					
	A	B	C	D	E
					= D - C
	Adopted Budget	Budget Adj	Amended Budget	Mid-Yr Revised Budget	Mid-Yr Changes
 Rev					
Admin O/H Alloc	(1,963,597)	-	(1,963,597)	(1,959,597)	4,000
Donation	(18,500)	-	(18,500)	(10,000)	8,500
Fees	(10,446,566)	-	(10,446,566)	(9,998,757)	447,809
Fines	(314,000)	-	(314,000)	(314,000)	-
Grants	(168,500)	-	(168,500)	(170,500)	(2,000)
Interest Income	(44,040)	-	(44,040)	(44,040)	-
Investment Earnings	(431,690)	-	(431,690)	(744,586)	(312,896)
Other	(144,250)	-	(144,250)	(120,070)	24,180
Permit	(1,153,000)	-	(1,153,000)	(1,055,100)	97,900
PY	(20,000)	-	(20,000)	-	20,000
PY Taxes	30,000	-	30,000	73,448	43,448
Reimb	(1,193,405)	-	(1,193,405)	(1,173,209)	20,196
Rental	(248,000)	-	(248,000)	(255,000)	(7,000)
Taxes	(33,301,139)	-	(33,301,139)	(33,461,318)	(160,179)
Transfers In	(10,937,476)	-	(10,937,476)	(12,026,476)	(1,089,000)
Grand Total	(60,354,163)	-	(60,354,163)	(61,259,205)	(905,042)
 Exp					
Building	1,891,287	(11,090)	1,880,197	1,964,987	84,790
Capital Projects	7,637,103	(7,637,103)	-	350,000	350,000
City Attorney	611,813	14,775	626,588	567,249	(59,339)
City Clerk	572,158	-	572,158	505,784	(66,374)
City Council	153,155	-	153,155	153,155	-
City Manager	179,276	-	179,276	157,108	(22,168)
Code Enforcement	835,386	81,630	917,016	874,886	(42,130)
Engineering	3,521,096	5,190	3,526,286	3,149,346	(376,940)
Finance	1,716,311	8,280	1,724,591	1,560,311	(164,280)
Graffiti Removal Program	309,623	-	309,623	282,623	(27,000)
HR	1,499,471	493,820	1,993,291	1,303,671	(689,620)
Planning	1,214,579	736,143	1,950,722	1,090,679	(860,043)
Police	37,648,053	554,049	38,202,102	35,577,102	(2,625,000)
Public Works	3,634,990	4,096	3,639,086	3,330,718	(308,368)
Recreation	3,161,716	50,414	3,212,130	3,024,410	(187,720)
Transfers In/Out	2,901,086	8,387,103	11,288,189	10,927,869	(360,320)
Non-Departmental	1,753,246	31,816	1,785,062	5,231,062	3,446,000
Grand Total	69,240,349	2,719,123	71,959,472	70,050,960	(1,908,512)
TOTAL REVENUES	60,354,163	-	60,354,163	61,259,205	905,042
TOTAL EXPENDITURES	(69,240,349)	(2,719,123)	(71,959,472)	(70,050,960)	1,908,512
OPERATING	(60,205,386)	5,667,980	(61,707,709)	(60,149,197)	1,558,512
CAPITAL IMP & PROJ TRANSFERS	(9,034,963)	(8,387,103)	(10,251,763)	(9,901,763)	350,000
NET SURPLUS / (DEFICIT)	(8,886,186)	(2,719,123)	(11,605,309)	(8,791,755)	2,813,554
NET OPERATING SURPLUS / (DEFICIT)	148,777	5,667,980	(1,353,546)	1,110,008	2,463,554
*This Chart does not include Measure M					

FY2023-24 City-wide Totals (All Funds)			
	REV	EXP	NET
GRAND TOTAL	(33,930,034)	(96,247,286)	62,317,252
CIP - OTHER	(24,188,540)	(32,100,760)	7,912,220
SUBTOTAL	(9,741,494)	(64,146,526)	54,405,032
CIP - WATER OPERATION (Project Costs)	-	(49,706,364)	49,706,364
SUBTOTAL - OPERATING	(9,741,494)	(14,440,162)	4,698,668
GENERAL FUND	905,042	(1,908,512)	2,813,554
MEASURE M (111)	(196,000)	-	(196,000)
GF SUBTOTAL	709,042	(1,908,512)	2,617,554
SPECIAL REV	(10,304,356)	(11,898,544)	1,594,188
DEBT SVC	27,324	66,236	(38,912)
SPEC REV & DEBT SUBTOTAL	(10,277,032)	(11,832,308)	1,555,276
INTERNAL SVC	190,237	1,601,946	(1,411,709)
ENTERPRISE	7,041	(1,926,932)	1,933,973
SUCCESSOR AGENCY	(370,782)	(374,356)	3,574
NON-GF SUBTOTAL	(173,504)	(699,342)	525,838
TOTAL CHANGE	(9,741,494)	(14,440,162)	4,698,668
NON-GF CHANGE	(10,450,536)	(12,531,650)	2,081,114

General Fund Revenues

The Fiscal Year 2023-24 Amended Budget forecasted General Fund revenue of \$60,354,163. As of March 21, 2024, the City had received \$31.1 million, or 52% of the annual budgeted amount. Based upon information currently available, it is projected that General Fund revenue will total \$61,259,205 by the end of the fiscal year. The anticipated additional \$905,042 includes the following:

Sales Tax

The Fiscal Year 2023-24 budget projected \$16.1 million. Due to unforeseen economic changes, the mid-year budget has been revised to reflect a reduction of \$2.2 million, the revised total is now \$13.9 million.

Property Tax

Property tax revenue was budgeted at \$2.6 million. Based upon continued analysis and receipts through December 2023, it is projected that the total amount received this fiscal year will increase by about \$1.3 million or 48% over the budgeted amount for a total of approximately \$3.9 million.

Measure M

As with the general sales tax, the City's local Measure M sales tax was budgeted based upon projections from the City's sales tax consultant. Based upon activity during the first six months of the fiscal year, it is projected that revenue from the Measure M local sales tax to the General Fund will total \$6.0 million, compared to the \$6.2 million included in the adopted budget. While general sales taxes are projected to increase beyond amount originally budgeted, Measure M sales tax revenues are projected to decrease, primarily due to some sales being subject to point of destination versus point of sales, and revenues are received by the cities where the taxable items are received

Motor Vehicle-in-Lieu

Revenue from the Motor Vehicle-in-Lieu fee was budgeted at \$6.4 million. The City is projecting revenues will increase by about \$0.6 million or 9.2%.

Franchise Fees

The City's franchise fees on cable, refuse, recycling and utilities were budgeted to generate \$5.1 million in revenue this fiscal year. Based upon revenue received to date, it is projected that franchise fee revenue will exceed the budgeted amount by \$65,000 or 1.0%.

Transfers-In

Transfers-in are projected to increase by \$1.1 million or 10.0%, to cover projected increases in Police Services costs as well as increases in Police Department overtime and part-time costs. The increase is covered primarily by available reserves in the City's Public Safety Community Services Districts.

Licenses and Permits

Revenue from the City's planning, building and engineering fees are projected to total \$5.9 million, a \$0.6 million decrease over the budgeted amount. This decrease is offset by decreases in related expenditures.

General Fund Expenditures

General Fund expenditure appropriations total \$71,959,472 including personnel cost. As of March 21, 2024, \$53.9 million (75%) of the amended budget had been expended. Based upon a review of all departmental budgets, it is projected that General Fund expenditures will total \$70,050,960 by the end of the fiscal year – a decrease of \$1,908,512 over the current Amended Budget.

Non-Departmental

During development of the Fiscal Year 2023-24 budget, an estimated attrition savings of \$3.5 million was budgeted under Non-Departmental items. The remainder of anticipated expenditures within the Non-Departmental budget was \$1.79 million. During the mid-year revision, the attrition savings of \$3.5 million was allocated amongst the Departments. Therefore the new estimated expenditure for Non-Departmental items is approximately \$5.3 million.

Transfers Out

A total of \$2.9 million was budgeted in the Transfer Out line items. \$2.7 million was related to the Landscape fund and the remaining \$0.2 million was related to Water Department offsets. No changes were made during the mid-year review.

General Fund Working Capital Reserve Balance

The General Fund available fund balance as of June 30, 2023 was \$26.9 million. The City's General Fund continues to generate an operating surplus. Recurring revenues are expected to exceed recurring expenditures by \$1,110,008. The \$9,901,763 of non-operating expenditures are primarily funding capital projects.

OTHER FUNDS:

Internal Service Funds

The proposed amendments to the Internal Service Funds reflect an increase of revenue allocations from other City funds of \$190,237. Retiree medical benefits paid out of the OPEB fund were originally budgeted at departmental level. The mid-year budget has moved the cost to reflect under the OPEB fund of \$1,801,680.

	Proposed Amendments		
	Revenue	Expenditure	Net
<u>Internal Service Funds</u>			
Information/Communication Systems	9,280	95,973	(86,693)
Fleet Maintenance	166,554	(300,272)	466,826
Building Maintenance	14,403	4,565	9,838
Other Post Employment Benefits	-	1,801,680	(1,801,680)
Total Internal Service Funds	\$ 190,237	\$ 1,601,946	\$ (1,411,709)

Enterprise Funds

The proposed amendments to the City's Enterprise Fund budgets resulted in a net decrease of \$51,633,296, out of which \$49.7 million are reductions of capital project costs.

	Proposed Amendments		
	Revenue	Expenditure	Net
<u>Enterprise Funds</u>			
Water Operations Fund	280,832	(48,939,163)	49,219,995
Water Facility Reserve Funds	(258,949)	(668,813)	409,864
Sewer Maintenance Fund	7,455	(576,749)	584,204
Sewer Maintenance Facility Funds	(188,002)	(133,113)	(54,889)
Water Front Operation Fund	(423,528)	(455,646)	32,118
Marina Fund	392,719	(777,892)	1,170,611
Island Energy	183,264	-	183,264
Pittsburg Power Fund	13,250	(81,920)	95,170
Total Enterprise Funds	\$ 7,041	\$ (51,633,296)	\$ 51,640,337

Special Revenue Funds

The proposed budget amendments to the Special Revenue Fund group will increase the projected year-end fund balance overall by \$1,594,188. This increase is a combination of decreased project costs in the Gas Tax funds, and an increase in transfers to the General Fund totaling \$975,602 from the Public Safety CFDs.

	Proposed Amendments		
	Revenue	Expenditure	Net
<u>Special Revenue Funds</u>			
California Theatre	(94,648)	220,072	(314,720)
Emergency Operations Center	(15,000)	(59,225)	44,225
Economic Development Fund	413	21,600	(21,187)
Gas Tax (HUTA)	27,781	(1,307,026)	1,334,807
Gas Tax (RMRA)	(3,822,426)	(3,730,003)	(92,423)
Measure J Tax Fund	(4,776,505)	(5,014,013)	237,508
CFD's & GHAD	60,792	1,036,394	(975,602)
Solid Waste Fund Fund	377,168	(228,048)	605,216
Housing - CDBG, HOME, Sec 8, Success	353,873	(18,080)	371,953
Grants - Police, PW, EPA, Other	(2,522,916)	(2,783,199)	260,283
Asset Forfeiture Fund	49,000	-	49,000
Regional Freeway Security Fund	-	4,000	(4,000)
Golf Course	1,600	-	1,600
NPDES Stormwater	56,512	(41,016)	97,528
Total Special Revenue Funds	\$ (10,304,356)	\$ (11,898,544)	\$ 1,594,188

STAFFING

Fiscal Year 2023/2024 Classification studies resulted in recommended position and salary range changes to support a classification structure that reflects the City's overall classification strategy. No additional positions are recommended for the mid-year budget.

SUMMARY

The proposed budget amendments are based upon information available at this time and anticipate an overall increase of \$62,317,252. This includes \$57,618,584 of decreased capital project expenditures in the Water Operating and CIP funds, resulting in a net increase of \$4,698,668.

ATTACHMENTS: City Council Resolution
 Pittsburg Power Company Resolution
 Successor Agency Resolution
 SW Pittsburg Geologic Hazard Abatement District II Resolution

Report Prepared By: Paul L. Rodrigues, Certified Public Accountant, Finance Director

Andy Wang, Certified Public Accountant, Assistant Finance Director

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Authorizing Necessary City and)
General Fund Budget Adjustments)
Based on Year-End Projections)

RESOLUTION NO. 24-

WHEREAS, on June 19, 2023 the City Council of the City of Pittsburgh adopted the Fiscal Year 2023-24 Budget with spending limits across funds (Resolution No. 23-14317); and

WHEREAS, changes to spending limits through the year are necessary to account for unexpected opportunities, unforeseen changes, or if the City's financial position changes and additional spending authority is required to meet the needs of the City; and

WHEREAS, staff has completed the mid-year review and analysis of the Fiscal Year 2023-24 Budget; and

WHEREAS, it has been determined that budget adjustments are necessary to fund certain operating and non-operating expenditures.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Pittsburgh hereby amends funds and budget for Fiscal Year 2023-24 as attached to this Resolution.

BE IT FURTHER RESOLVED that the Finance Director or his/her designee is hereby authorized to approve payment of goods and services received by the City of Pittsburgh in accordance with the City's approved budget, programs and policies.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 15th day of April 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Fiscal Year 2023-24 All Funds			
	Proposed Amendments		
	Revenue	Expenditure	Net
<u>General Funds</u>			
General Fund	905,042	(1,908,512)	2,813,554
Measure M Fund	\$ (196,000)	\$ -	(196,000)
Total General Funds	\$ 709,042	\$ (1,908,512)	\$ 2,617,554
<u>Internal Service Funds</u>			
Information/Communication Systems	9,280	95,973	(86,693)
Fleet Maintenance	166,554	(300,272)	466,826
Building Maintenance	14,403	4,565	9,838
Other Post Employment Benefits	-	1,801,680	(1,801,680)
Total Internal Service Funds	\$ 190,237	\$ 1,601,946	\$ (1,411,709)
<u>Enterprise Funds</u>			
Water Operations Fund	280,832	(48,939,163)	49,219,995
Water Facility Reserve Funds	(258,949)	(668,813)	409,864
Sewer Maintenance Fund	7,455	(576,749)	584,204
Sewer Maintenance Facility Funds	(188,002)	(133,113)	(54,889)
Water Front Operation Fund	(423,528)	(455,646)	32,118
Marina Fund	392,719	(777,892)	1,170,611
Island Energy	183,264	-	183,264
Pittsburg Power Fund	13,250	(81,920)	95,170
Total Enterprise Funds	\$ 7,041	\$ (51,633,296)	\$ 51,640,337
<u>Special Revenue Funds</u>			
California Theatre	(94,648)	220,072	(314,720)
Emergency Operations Center	(15,000)	(59,225)	44,225
Economic Development Fund	413	21,600	(21,187)
Gas Tax (HUTA)	27,781	(1,307,026)	1,334,807
Gas Tax (RMRA)	(3,822,426)	(3,730,003)	(92,423)
Measure J Tax Fund	(4,776,505)	(5,014,013)	237,508
CFD's & GHAD	60,792	1,036,394	(975,602)
Solid Waste Fund Fund	377,168	(228,048)	605,216
Housing - CDBG, HOME, Sec 8, Successor Agency	353,873	(18,080)	371,953
Grants - Police, PW, EPA, Other	(2,522,916)	(2,783,199)	260,283
Asset Forfeiture Fund	49,000	-	49,000
Regional Freeway Security Fund	-	4,000	(4,000)
Golf Course	1,600	-	1,600
NPDES Stormwater	56,512	(41,016)	97,528
Total Special Revenue Funds	\$ (10,304,356)	\$ (11,898,544)	\$ 1,594,188
<u>Capital Project Funds</u>	\$ (24,188,540)	\$ (32,100,760)	\$ 7,912,220
<u>Debt Service Funds</u>			
Assessment Districts	27,324	66,236	(38,912)
Total Debt Service Funds	\$ 27,324	\$ 66,236	\$ (38,912)
<u>Successor Agency Funds</u>	\$ (370,782)	\$ (374,356)	\$ 3,574
GRAND TOTAL	\$ (33,930,034)	\$ (96,247,286)	\$ 62,317,252

BEFORE THE GOVERNING BOARD OF THE PITTSBURG POWER COMPANY
OF THE CITY OF PITTSBURG

In the Matter of:

Authorizing Necessary Budget Adjustment)
for Pittsburg Power Company Based on)
Year-End Projections)

RESOLUTION NO. 24-

WHEREAS, on June 19, 2023 the Board of Directors of the Pittsburg Power Company, a Joint Powers Authority, adopted the Fiscal Year 2023-24 Budget (Resolution No. 23-454); and

WHEREAS, the City prepares and adopts the Pittsburg Power Company Budget with the intent of providing a planned program for services and a financial system to carry out the planned program of services; and

WHEREAS, staff has completed the mid-year review of the Fiscal Year 2023-24 Budget; and

WHEREAS, it has been determined that budget adjustments are necessary to fund certain operating and non-operating expenditures; and

WHEREAS, staff recommends an expenditure budget decrease in the amount of \$81,920.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Pittsburg Power Company of the City of Pittsburg as follows:

Section 1. Findings

- A. The recitals set forth above are true and correct statements and are hereby incorporated in conjunction with the respective staff report.
- B. That the Finance Director or his/her designee is hereby authorized to approve payment of goods and services received by the Pittsburg Power Company in accordance with the Pittsburg Power Company's approved budgets, programs and policies.
- C. Those funds are hereby and shall be appropriated resulting in a decreased expenditure appropriation of \$81,920 for the Pittsburg Power fund.

Section 2. Authorization

Authorize a \$81,920 expenditure appropriation decrease.

PASSED AND ADOPTED by the Governing Board of the Pittsburg Power Company of the City of Pittsburg at a regular meeting held on the 15th day of April 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Chair

ATTEST:

Garrett Evans, Executive Secretary

BEFORE THE GOVERNING BOARD OF THE SUCCESSOR AGENCY FOR THE
REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG

In the Matter of:

Authorizing Necessary Budget Adjustment))
for the Successor Agency for the)
Redevelopment Agency of the City of)
Pittsburg Based on Year End Projections)

RESOLUTION NO. 24-

WHEREAS, on June 19, 2023 the Governing Board of the Successor Agency for the Redevelopment Agency of the City of Pittsburgh (Successor Agency), adopted the Fiscal Year 2023-24 Budget by Resolution No. 23-054; and

WHEREAS, the City prepares and adopts the Successor Agency's Budget with the intent of providing a planned program for services and a financial system to carry out the planned program of services; and

WHEREAS, staff has completed the mid-year review of the Fiscal Year 2023-24 Budget; and

WHEREAS, it has been determined that budget adjustments are necessary to fund certain operating and non-operating expenditures; and

WHEREAS, staff recommends an expenditure budget decrease in the amount of \$315,623.

NOW, THEREFORE BE IT RESOLVED, the Governing Board of the Successor Agency for the Redevelopment Agency of the City of Pittsburg hereby recognizes an expenditure budget decrease in the amount of \$315,623 resulting in a decreased expenditure appropriation and authorizes the Finance Director or his/her designee to approve payment of goods and services received by the Successor Agency in accordance with the Successor Agency's approved budgets, programs and policies.

PASSED AND ADOPTED by the Governing Board of the Successor Agency for the Redevelopment Agency of the City of Pittsburg at a regular meeting on the 15th day of April 2024, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

Juan Antonio Banales, Chair

ATTEST:

Alice E. Evenson, Agency Secretary

BEFORE THE SOUTHWEST PITTSBURG GEOLOGIC HAZARD ABATEMENT
DISTRICT II OF THE CITY OF PITTSBURG

In the Matter of:

Authorizing Necessary Budget Adjustments)
for the Southwest Pittsburg Geologic)
Hazard Abatement District II (GHAD II))
based on Year-End Projections)

RESOLUTION NO. 24-

WHEREAS, on June 19, 2023 the Board of Directors of the Southwest Pittsburg Geologic Hazard Abatement District II (GHAD II), adopted the Fiscal Year 2023-24 Budget (Resolution No. 23-084); and

WHEREAS, the City prepares and adopts the GHAD II Budget with the intent of providing a planned program for services and a financial system to carry out the planned program of services; and

WHEREAS, staff has completed the mid-year review of the Fiscal Year 2023-24 Budget; and

WHEREAS, it has been determined that budget adjustments are necessary to fund certain operating and non-operating expenditures; and

WHEREAS, staff recommends an expenditure budget increase in the amount of \$22,387.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the GHAD II as follows:

Section 1. Findings

- A. The recitals set forth above are true and correct statements and are hereby incorporated in conjunction with the respective staff report.
- B. That the Finance Director or his/her designee is hereby authorized to approve payment of goods and services received by the Pittsburg Power Company in accordance with the GHAD II's approved budgets, programs and policies.
- C. Those funds are hereby and shall be appropriated resulting in an increased expenditure appropriation of \$22,387 for the GHAD II.

Section 2. Authorization

Authorize a \$22,387 expenditure appropriation increase.

PASSED AND ADOPTED by the Board of Directors of the Southwest Pittsburgh Geologic Hazard Abatement District II of the City of Pittsburgh at a regular meeting held on the 15th day of April 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Chair

ATTEST:

Alice E. Evenson, Agency Secretary

**CITY OF PITTSBURG
CITY COUNCIL/AGENCY CONCURRENT MEETING MINUTES**

DATE: March 18, 2024

LOCATION: Council Chamber, City Hall, 65 Civic Avenue, Pittsburg, CA 94565

CITY COUNCIL/AGENCY MEMBERS

Juan Antonio Banales, Mayor/Chair
Jelani Killings, Vice-Mayor/Chair
Dionne Adams, Council/Agency Member
Angelica Lopez, Council/Agency Member
Shanelle Scales-Preston, Council/Agency Member
S.L. Floyd, Agency Member
Annie Hill Herring, Agency Member

APPOINTED OFFICIALS

Garrett Evans, City Manager/Executive Director
Donna Mooney, City Attorney/Legal Counsel
Alice E. Evenson, City Clerk/Agency Secretary (elected)
Nancy Parent, City Treasurer (elected)

Mayor Banales called the regular meeting to order at 7:02 P.M. in the Council Chamber at City Hall, 65 Civic Avenue Pittsburg, CA after having convened at 6:04 P.M. for the following Closed Session:

1. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Initiation of litigation pursuant to Section 54956.9(d)(4):
Number of cases: One

City Attorney Mooney stated there were no reportable actions taken in Closed Session.

ROLL CALL

All Members were present.

PLEDGE OF ALLEGIANCE

Mayor Banales led the Pledge of Allegiance.

PRESENTATIONS

2. Presentation by Delta Diablo

Bruce Ohlson, Pittsburg, advocated for hazardous waste to be accepted by Delta Diablo regardless of the method of transportation, e.g. vehicle or bicycle.

3. Annual Review of the Military Equipment Use Ordinance

PROCLAMATIONS

4. World Down Syndrome Day
5. Cesar Chavez Day

CITY MANAGER REPORTS/REMARKS

City Manager Evans noted for the record that item #8 on the Housing Authority Consent calendar had a correction on the published balance amount of \$6,858,098.23, which should have been \$6,809,763.08. Copies of the correction were available for public inspection at the dais. He also mentioned that item #16 on the Combined City Council Consent calendar would be pulled and brought back at a later date.

Assistant City Manager Aliotti provided an update on City events and reminded everyone that the first City Council meeting in April will be held on Tuesday, April 2, 2024 due to the Cesar Chavez holiday observed on Monday, April 1, 2024.

PUBLIC COMMENTS

Comments regarding travel support for In My Section Inc, an arts education nonprofit were received from:

Alexander Finn
Jordan Cisneros

Comments regarding nuisance at the Marina parking lot and request for more Code Enforcement actions to be taken were received from:

James Marriott
Peter Wilson
Susan Burkitt
Patt Young

Rose Mary Tumbaga, Pittsburg on behalf of the Fil-American Association invited City Council to attend the 82nd Commemoration, Fall of Bataan-Corregidor event on April 13, 2024.

Glory Guerrero, Pittsburg, raised concerns about the hourly rate to rent baseball fields and suggested the price be lowered or waived for organizations serving Pittsburg youth.

COMMITTEE REPORTS

Vice Mayor Killings attended the Finance and Community and Economic Development Subcommittee Meetings.

CONSIDERATION

9. Adoption of a City Council Minute Order to Appoint Candidates to the Community Advisory Commission.

On motion by Member Adams, seconded by Vice Mayor Killings, to appoint Suvash

Shah Thakuri to the Community Advisory Commission for the 4-year term beginning March 1, 2024, through February 28, 2028, and carried unanimously.

On motion by Member Scales-Preston, seconded by Member Adams, to appoint Sonja Shephard to the Community Advisory Commission for the 4-year term beginning March 1, 2024, through February 28, 2028, and carried unanimously.

On motion by Member Lopez, seconded by Vice Mayor Killings, to appoint Michael Aparicio to the Community Advisory Commission for the 4-year term beginning March 1, 2024, through February 28, 2028, and adopted by the following vote:

AYES: Killings, Lopez, Scales-Preston, Banales

NOES: Adams

On motion by Vice Mayor Killings seconded by Member Scales-Preston, to appoint Monique Robinson to the Community Advisory Commission for the 4-year term beginning March 1, 2024, through February 28, 2028, and carried unanimously.

10. Adoption of a City Council Resolution to Allocate Funding from the Business Improvement District towards the Facade Improvement and Landscape Improvement Grant Programs.

On motion by Vice Mayor Killings, seconded by Member Scales-Preston and carried unanimously.

11. Adoption of a City Council Minute Order to Approve City Goals and Priorities for Fiscal Year 2024-2025.

On Motion by Mayor Banales, seconded by Member Scales-Preston to send the item back to the Governance Performance Subcommittee to refine priority service areas before adoption and carried unanimously.

CONFLICT OF INTEREST STATEMENT

Vice Mayor Killings stated he would recuse himself from voting on Consent Item #18, due to real property interest.

Member Scales-Preston stated she would recuse herself from voting on Consent Item #18. [Note: Member Scales-Preston did not state a reason for her recusal.]

COMBINED CITY COUNCIL, PITTSBURG ARTS AND COMMUNITY FOUNDATION, PITTSBURG POWER COMPANY, SOUTHWEST PITTSBURG GHAD II AND SUCCESSOR AGENCY CONSENT CALENDAR

As noted earlier in the City Manager reports/remarks, Item #16 on the Consent Calendar was pulled and will be brought back at a later date.

On Motion by Member Lopez, seconded by Member Adams and carried unanimously.

12. Minutes of March 4, 2024.

13. Adoption of a City Council Resolution Authorizing the Application of the 2024/2025 Transportation Development Act (TDA) Article 3 Grant Funds.
14. Adoption of a City Council Resolution to Establish the Fiscal Year 2024/25 Annual Stormwater Utility Area Fee.
15. Adoption of a City Council Resolution Authorizing the City Manager to Execute an Agreement for Temporary Landscape Maintenance Assistance.
17. Adoption of a City Council Resolution Accepting the Military Equipment Annual Report, Determining the Use of Equipment Complied with Policy 706, and Determining Policy 706 will Continue.
19. Adoption of an Ordinance Amending the Pittsburg Municipal Code to add Chapter 8.14, "Illegal Dumping"
18. Adoption of Two Ordinances for the Objective Design Standards 2023 Project: 1) Adding Article XXI to Chapter 18.84 of the Pittsburg Municipal Code; and 2) Amending the Zoning Map for Certain Multi-family Housing and Mixed-use Development Projects to Further Housing Production Consistent with State Law.
16. Adoption of a City Council Resolution Authorizing the Application of the Bureau of Reclamation Water and Energy Efficiency Grant for Automatic Meter Infrastructure. [Item Pulled]

COUNCIL REQUEST FOR FUTURE AGENDA ITEMS

There were no requests for future agenda items.

COUNCIL MEMBER REMARKS

Vice Mayor Killings commended Planning staff for hosting an envisioning meeting on March 16, 2024, at the Marina Center. He noted the meeting was well attended and offered an opportunity for community members to help shape Pittsburg's Downtown and Marina.

Member Adams echoed Vice Mayor Killings' sentiments regarding the Community meeting held by the Planning Department. She also commended Recreation staff for a successful Twilight Hoops event.

ADJOURNMENT

The meeting was adjourned at 8:53 P.M. to April 02, 2024.

Respectfully submitted,

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Accepting Project 3119 Police Department Evidence and Intake Room Improvements as Complete, Authorizing the City Engineer to File a Notice of Completion, and Allocating Remaining Funds

MEETING DATE: April 15, 2024

EXECUTIVE SUMMARY

Project 3119 - Police Department Evidence and Intake Room Improvements (the "Project") facilitated demolition work, supply storage, installation of mobile shelving units, incorporation of seismic safety equipment, modification of cubicles, addition of storage units, and flooring installation. This resolution will accept the construction contract as complete, authorize the City Engineer to file a Notice of Completion, and allocate remaining funds to Project 3120 Police Women's Locker Room Expansion 2.

FISCAL IMPACT

The Project was funded with \$350,000 from the General Funds Reserve (Resolution No. 21-14016) and \$150,000 from Building Maintenance (Resolution No. 20-13859).

The total anticipated expenditures for the Project are \$384,211. Any remaining funds will be allocated to Project 3120 Police Women's Locker Room Expansion 2.

An estimated Expenditures Summary is attached to this staff report.

RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution accepting the Project as complete, authorize the City Engineer to execute a Notice of Completion, and allocate remaining funds to Project 3120 Police Women's Locker Room Expansion 2.

BACKGROUND

On December 21, 2020, the City Council adopted Resolution No. 20-13859, approving Addendum One to the Five-Year Capital Improvement Program for Fiscal Years 2019/20 through 2023/24 allocating \$150,000 for the Project.

On November 15, 2021, the City Council adopted Resolution No. 21-14016, authorizing the Agreement for \$307,500 for the installation of storage and seismic safety equipment with Systems & Space, Inc.

On May 12, 2022, the City issued Contract Change Order No. 1, adding services and increasing the compensation by \$2,850 for the modification of cubicles.

On September 30, 2022, the City issued Contract Change Order No. 2, increasing the compensation by \$10,740 for the installation of additional flooring.

On October 23, 2023, the City Council authorized the execution of a First Amendment to the Agreement with Systems and Space, Inc. in the amount of \$31,140 for a total compensation of \$338,640.

On January 29, 2024, the contractor reached substantial completion.

SUBCOMMITTEE FINDINGS

This item was not reviewed by a subcommittee.

STAFF ANALYSIS

The evidence room and intake area at the Police Department lacked sufficient space for storage and needed updated equipment to align with the recommended best practices endorsed by the State Department of Justice and industry standards.

City staff have reviewed the work performed by Systems and Space, Inc. and have determined that all work has been completed as required by the project.

ATTACHMENTS: Resolution
 Budget Summary

Report Prepared By: Alex Ruiz, Assistant Engineer

Project Budget Summary

Project 3119 - Police Evidence and Intake Room Improvements

Project Funding:

General Fund (110)	\$350,000
Building Operations and Maintenance (621)	\$150,000
Funding Total	\$500,000

Project Expenditures:

Design:

(Code 2122)

Design	\$0
Subtotal	\$0

Miscellaneous:

(Code 1399)

Advertising	\$0
Subtotal	\$0

Construction:

(Code 2281)

Construction	\$356,211
Subtotal	\$356,211

Staff Time:

(Code 1101)

Staff Costs	\$14,000
Subtotal	\$14,000

Administrative

Overhead:

(Code 2372)

Staff Costs	\$0
	\$14,000
Subtotal	\$14,000

Expenditures Total

\$384,211

Surplus/Carryover Funds to Project 3120

\$115,789

Total

\$500,000

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Accepting Project 3119 - Police)
Department Evidence and Intake Room)
Improvement as Complete, Authorizing)
the City Engineer to File a Notice of)
Completion, and Allocating Remaining)
Funds)

RESOLUTION NO. 24-

WHEREAS, Project 3119 - Police Department Evidence and Intake Room Improvements (the "Project") upgraded the existing configuration of the evidence processing area within the Police Department at City Hall; and

WHEREAS, on December 21, 2020, the City Council adopted Resolution No. 20-13859, approving Addendum One to the Five-Year Capital Improvement Program for Fiscal Years 2019/20 through 2023/24 allocating \$150,000 to the Project; and

WHEREAS, staff solicited cost proposals from Systems & Space, Inc., a cooperative purchasing program vendor enrolled in Sourcwell, which develops RFPs and IFBs for national, competitive solicitations that meets requirements for equipment commonly used by public agencies; and

WHEREAS, on November 15, 2021, the City Council adopted Resolution No. 21-14016, authorizing the Agreement in the amount of \$307,500 for the installation of storage and seismic safety equipment; and

WHEREAS, on May 12, 2022, the City issued Contract Change Order No. One, which added services and increased the compensation by \$2,850, for the modification of cubicles; and

WHEREAS, on August 30, 2022, staff issued Task Order No. Two to Terracon for special inspection and material testing, for a total compensation of \$2,813; and

WHEREAS, on September 30, 2022, the City issued Contract Change Order No. Two, increasing the compensation by \$10,740 for the installation of additional flooring; and

WHEREAS, on January 30, 2023, the City issued a Contract Change Order No. One in the amount of \$632 for an additional day of inspection by Terracon, resulting in the total contract amount of \$3,445; and

WHEREAS, on October 23, 2023, a request was made to add services, increase the compensation amount by \$17,550, and incorporate Change Orders One and Two into an amendment to the agreement with Systems and Space, Inc.; and

WHEREAS, on October 23, 2023, the City Council authorized the execution of a First Amendment to the Agreement with Systems and Space, Inc. in the amount of \$31,140 for a total compensation of \$338,640; and

WHEREAS, on January 29, 2024, the contractor completed the project; and

WHEREAS, the total anticipated expenditures are \$384,211; and

WHEREAS, the remaining project funds will be allocated to Project 3120 Police Women's Locker Room Expansion 2.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburg hereby accepts the Project as complete, authorizes the City Engineer to execute a Notice of Completion and file said document with the Office of the Recorder of the County of Contra Costa, State of California, within 10 days from the date hereof, and allocates the remaining funds from the Project to Project 3120 Police Women's Locker Room Expansion 2.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 15th day of April 2024 by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST BY:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Accepting the Plans and Specifications and Awarding Project 2028 - Crestview Drive Safety Improvements

MEETING DATE: April 15, 2024

EXECUTIVE SUMMARY

Project 2028 - Crestview Drive Safety Improvements (the "Project") installs pavement markings, raised medians, and pedestrian crossings at six intersections along Crestview Drive at Nina Place, Alta Vista Circle, Kingsberry Place, Atherton Avenue, William Way and Crestview Lane. If adopted, this resolution will accept the Project plans and specifications and award a construction contract to RK Engineering, Inc.

FISCAL IMPACT

The proposal from RK Engineering, Inc. is \$508,929. for the Project. Funding for construction will be provided by the existing Project budget. No other funds will be required.

The Budget Summary is attached to this report.

RECOMMENDATION

Staff recommends that the City Council accept the plans and specifications and authorize the City Manager to execute a construction contract for the Project with RK Engineering, Inc. for a total amount not to exceed \$508,929.

Staff recommends that the City Council allocate a construction contingency of \$101,786 for any unanticipated costs and contract change orders.

Staff further recommends that the City Engineer be authorized to approve contract change orders in an amount not to exceed 50% of the construction contingency, and the City Manager be authorized to approve change orders in an amount not to exceed the approved project budget.

BACKGROUND

On August 28, 2020, staff applied to Caltrans for a grant from the Highway Safety Improvement Program (HSIP). On March 30, 2021, Caltrans notified the City that the grant application was approved for \$378,220.

On June 21, 2021, the City Council adopted Resolution No. 21-13944, approving the City's Five-Year Capital Improvement Program for Fiscal Year 2021/22 through 2025/26 and the appropriation of \$41,180 from RMRA Road Maintenance and Rehabilitation (Fund 228) for the Project.

On June 20, 2022, with adoption of Resolution No. 22-14118, \$200,000 of CDBG funds were allocated to the Project. On May 15, 2023, with adoption of Resolution No. 23-14295, \$162,374 of CDBG funds were further allocated to the Project.

On June 19, 2023, the City Council adopted Resolution No 23-14318, approving the City's Five-Year Capital Improvement Program for Fiscal Years 2023/24 through 2027/28 and the appropriation of \$151,700 from Highway User Tax Account Gas Tax (HUTA Fund 203) for the Project.

On March 7, 2024, staff advertised the Project for construction bids. On March 28, 2024, 7 construction bids were received, and RK Engineering, Inc. was the lowest responsive responsible bidder with a base bid in the amount of \$508,929.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

Installation of pavement markings, raised medians, and pedestrian enhancements at six intersections along Crestview Drive will enhance safety for pedestrians as well as improve vehicular traffic.

The City received 7 bids for construction of the Project. The lowest bid was \$508,929 and the highest bid was \$695,519. The lowest bid is 14% below the engineer's estimate and 13% below the average of all 7 bids.

ATTACHMENTS: Resolution
 Project Budget Summary

Report Prepared By: Andrew Peters, Assistant Engineer

Contract 2028, Crestview Drive Safety Improvement

Project Funding

Highway Safety Improvement Program 10 (HSIP) Grant	\$378,220
FY 2021/22 Gas Tax (RMRA Fund 228)	\$41,180
HUTA	\$151,700
CDBG	\$362,374
Funding Total	\$933,474

Project Expenditures:

Design: (Code 2122)	Consultant Design	\$60,000
	Subtotal	\$60,000

Miscellaneous: (Code 1399)	Advertising	\$1,000
	Reproduction	\$1,000
	Postage	\$1,000
	Subtotal	\$3,000

Construction: (Code 2281)	Construction	\$508,929
	Construction Contingency (~20%)	\$101,786
	Material Testing	\$5,000
	Subtotal	\$615,715

Staff Time: (Code 1101)	Staff Costs During Design Phase	\$30,000
	Staff Construction Management	\$45,000
	Subtotal	\$75,000

Administrative Overhead: (Code 2372)	Staff Overhead Costs during Design	\$30,000
	Staff Overhead during Construction	\$45,000
	Subtotal	\$75,000

Estimated Total Expenditures	\$828,715
Remaining Funds	\$104,759

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Accepting the Plans and Specifications)
and Awarding Project 2028 - Crestview)
Drive Safety Improvements)

RESOLUTION NO. 24-

WHEREAS, Project 2028-Crestview Drive Safety Improvements (the "Project") installs pavement markings, raised medians, and pedestrian crossings at six intersections along Crestview Drive at Nina Place, Alta Vista Circle, Kingsberry Place, Atherton Avenue, William Way, and Crestview Lane; and

WHEREAS, on August 28, 2020, staff applied to Caltrans for a grant from the Highway Safety Improvement Program (HSIP); and

WHEREAS, on March 30, 2021, Caltrans notified the City that the grant application was approved for \$378,220; and

WHEREAS, on June 21, 2021, the City Council adopted Resolution No. 21-13944, approving the City's Five-Year Capital Improvement Program for Fiscal Years 2021/22 through 2025/26 and the appropriation of \$41,180 from RMRA Road Maintenance and Rehabilitation (Fund 228) to the Project; and

WHEREAS, on June 20, 2022, with adoption of Resolution No. 22-14118, \$200,000 of CDBG funds were allocated to the Project; and

WHEREAS, on May 15, 2023, with adoption of Resolution No. 23-14295, \$162,374 of CDBG funds were further allocated to the Project; and

WHEREAS, on June 19, 2023, the City Council adopted Resolution No. 23-14318, approving the City's Five-Year Capital Improvement Program for Fiscal Years 2023/24 through 2027/28 and the appropriation of \$151,700 from Highway User Tax Account Gas Tax (HUTA Fund 203) to the Project; and

WHEREAS, on March 7, 2024, staff advertised the Project for construction bids; and

WHEREAS, on March 28, 2024, 7 construction bids were received, and RK Engineering, Inc. was the lowest responsive responsible bidder with a base bid in the amount of \$508,929; and

WHEREAS, staff recommends that the City Council accept the plans and specifications; and

WHEREAS, staff recommends the City Council award a contract to RK Engineering, Inc. in the amount not to exceed \$508,929 for construction of the Project; and

WHEREAS, staff further recommends establishing a construction contingency in the amount of \$101,786 for unanticipated costs and contract change orders; and

WHEREAS, staff recommends that the City Engineer or his designee be authorized to approve contract change orders for a total amount not to exceed 50% of the contingency and the City Manager be authorized to approve change orders for a total amount not to exceed the approved project budget.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburg hereby accepts the plans and specifications, awards a contract to RK Engineering, Inc., authorizes a construction contingency in the amount of \$101,786, authorizes the City Engineer or his designee to approve contract change orders for a total amount not to exceed 50% of the contingency, and authorizes the City Manager to approve change orders for an amount not to exceed the approved project budget.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 15th day of April 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Allocating Additional Funds, Accepting the Plans and Specifications, and Awarding Project 8336- Americana Park Bypass Channel

MEETING DATE: April 15, 2024

EXECUTIVE SUMMARY

Project 8336 - Americana Park Bypass Channel (the "Project") addresses flooding of North Parkside Drive and the detention basin, through construction of a bypass channel. If adopted, this resolution will allocate additional funds to the Project; accept the project plans and specifications, and award a construction contract to Kroeker, Inc.

FISCAL IMPACT

The proposal from Kroeker, Inc is \$805,103.82 for construction of the Project. Funding will be provided by \$580,000 from Infrastructure Repair and Replacement (Fund 310), \$101,800 from Highway Users Tax Account (HUTA) (Fund 203), \$100,000 from Water Operation Fund (Fund 501), \$119,999 from 2006 Tax Revenues (Resolution No. 08-1287), and \$374,879 from Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) funds previously allocated to the Project.

This resolution will allocate an additional \$145,000 from Water Operation Fund (Fund 501), \$30,000 from Infrastructure Repair and Replacement Fund (Fund 310) and \$103,000 from American Rescue Plan Act (ARPA) (Fund 298). If approved, the total project budget will be \$1,554,678.

RECOMMENDATION

City Council adopt the attached resolution to allocate an additional \$145,000 from Water Operation Fund (Fund 501), \$30,000 from Infrastructure Repair and Replacement Fund (Fund 310) and \$103,000 from ARPA (Fund 298), accept the plans and specifications, and authorize the City Manager to execute a construction contract for the Project with Kroeker, Inc for a total amount not to exceed \$805,103.82.

Staff recommends that the City Council allocate a construction contingency of \$80,510 for any unanticipated costs and contract change orders. Staff further recommends that the City Engineer be authorized to approve contract change orders in an amount not to exceed 50% of the construction contingency, and the City Manager be authorized to approve change orders in an amount not to exceed the approved project budget.

BACKGROUND

On June 2, 2008, City Council adopted Resolution No. 08-1287, allocating \$119,999 from the 2006 Tax Revenues to the Project (Funds 5938 and 5940).

On March 17, 2014, the City Council adopted Resolution No. 14-12100, approving the allocation of \$580,000 from the Infrastructure Repair and Replacement Fund (Fund 310).

On June 15, 2023, City Council adopted Resolution No. 23-14318, approving the Five-Year Capital Improvement Program for Fiscal Years (FY) 2023/24 through 2027/28, allocating \$101,800 from HUTA (Fund 203) and \$100,000 from Water Operation Fund (Fund 501) to the Project.

On September 18, 2023, City Council adopted Resolution No. 23-14370 accepting the FEMA Hazard Mitigation Grant in the amount of \$374,879 making the total Project budget \$1,276,678.

On March 13, 2024, Staff advertised the Project for construction bids.

City staff received three bid proposals for project construction. Kroeker was the lowest responsive, responsible bidder with a base bid in the amount of \$805,103.82. The low bid has been checked for arithmetical errors, completeness, and conformance with the bid requirements.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

The detention basin located in the Americana Park Subdivision has been prone to overflowing on North Parkside Drive during heavy rains. The Project intends to address this flooding through the construction of a bypass channel across the PG&E transmission corridor. This channel will redirect storm water to another channel capable of increased water volume, preventing overflow in the detention basin and along North Parkside Drive.

City staff is requesting additional funding of \$278,000 allocated to the Project to provide for higher than estimated cost to construct this project. This funding is essential to guarantee the timely completion of the Project.

The Project Budget Summary follows on the next page.

Americana Park Bypass Channel				
Project 8336				
Date: April 2024				
Project Funding:				
	Tsfr-In from 2006 Tax Revenues (5938 & 5940)			\$119,999
	Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant			\$374,879
	Infrastructure Repair and Replacement Fund (310)			\$580,000
	Water Operations Fund (501)			\$100,000
	HUTA (Fund 203)			\$101,800
	Allocation from Water Operation Fund (501)			\$145,000
	Allocation from Infrastructure Repair and Replacement Fund			\$30,000
	Allocation from ARPA Fund (298)			\$103,000
		Funding Total		\$1,554,678
Project Expenditures:				
Design:	Consultant Design + Amendments			\$272,130
(Code 2122)	Permitting (USACE, USDFW, HCP, etc.)			\$45,000
		Subtotal		\$317,130
Miscellaneous:	Misc. Services & Supplies			\$9,600
(Code 1399)				
		Subtotal		\$9,600
Advertising:	Advertising			\$3,000
(Code 2203)				
		Subtotal		\$3,000
Construction:				
(Code 2281)	Construction			\$805,103.82
	Construction Contingency (10%)			\$80,510
	Construction Monitoring Fee			\$76,550
	East Contra Costa HCP Impact Fees			\$17,098
	Material Testing			\$15,871
	Expenditures from previous SD project			\$99,815
		Subtotal		\$1,094,948
Staff Time:	Staff			\$65,000
(Code 1101)		Subtotal		\$65,000
Admin:	Admin Overhead			\$65,000
(Code 2372)		Subtotal		\$65,000
		Expenditures Total		\$1,554,678

ATTACHMENTS: Resolution

Report Prepared By: Alex Ruiz, Assistant Engineer

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Allocating Additional Funds, Accepting)
the Plans and Specifications, and)
Awarding Project 8336 - Americana)
Park Bypass Channel Project)

RESOLUTION NO. 24-

WHEREAS, Project 8336 - Americana Park Bypass Channel (the "Project") addresses flooding of North Parkside Drive and the detention basin, through construction of a bypass channel, redirecting stormwater to another channel; and

WHEREAS, on June 2, 2008, City Council adopted Resolution No. 08-1287, allocating \$119,999 from 2006 Tax Revenues (Funds 5936 and 5940) to the Project; and

WHEREAS, on March 17, 2014, City Council adopted Resolution No. 14-12100, allocating \$580,000 from the Infrastructure Repair and Replacement (Fund 310) to the Project; and

WHEREAS, on June 15, 2023, City Council adopted Resolution No. 23-14318, approving the Five-Year Capital Improvement Program for Fiscal Years 2023/24 through 2027/28, allocating \$101,800 from Highway Users Tax Account (HUTA) (Fund 203) and \$100,000 from Water Operation Fund (Fund 501) to the Project; and

WHEREAS, on September 18, 2023, City Council adopted Resolution No. 23-14370 accepting the Federal Emergency Management Agency Hazard Mitigation Grant in the amount of \$374,879 for a total Project Budget of \$1,276,678; and

WHEREAS, on March 13, 2024, staff advertised the Project for construction bids; and

WHEREAS, on April 3, 2024, three bids were received and Kroeker, Inc. was the lowest responsive, responsible bidder with a base bid in the amount of \$805,103.82; and

WHEREAS, staff recommends the City Council accept the plans and specifications; and

WHEREAS, staff recommends the City Council award a contract to Kroeker, Inc. in an amount not to exceed \$805,103.82 for construction of the Project; and

WHEREAS, staff further recommends establishing a construction contingency in the amount of \$80,510 for unanticipated costs and contract change orders; and

WHEREAS, staff recommends that the City Engineer or his designee be authorized to approve contract change orders for a total amount not to exceed 50% of the contingency and the City Manager be authorized to approve change orders for a total amount not to exceed the approved project budget; and

WHEREAS, staff further recommends that the City Council allocate an additional \$145,000 from Water Operation Fund (Fund 501), \$30,000 from Infrastructure Repair and Replacement Fund (Fund 310) and \$103,000 from American Rescue Plan Act (ARPA) (Fund 298) to the Project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburgh hereby accepts the plans and specifications, awards a contract to Kroeker, Inc., authorizes a construction contingency in the amount of \$80,510, authorizes the City Engineer or his designee to approve contract change orders for a total amount not to exceed 50% of the contingency, and authorizes the City Manager to approve change orders for an amount not to exceed the approved project budget.

BE IT FURTHER RESOLVED, that the City Council allocates an additional \$145,000 from Water Operation Fund (Fund 501), \$30,000 from Infrastructure Repair and Replacement Fund (Fund 310) and \$103,000 from ARPA (Fund 298) to the Project.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 15th day of April 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Authorizing the Execution of Consulting Services Agreement with RCH Group, Planning & Environmental Consulting, Inc.

MEETING DATE: April 15, 2024

EXECUTIVE SUMMARY

The proposed item would authorize the City Manager to execute a Consulting Services Agreement with RCH Group, Planning & Environmental Consulting, Inc. in an amount not to exceed \$119,480 for CEQA Consultant Fees and would allocate \$82,400 for the consultant budget for contract planning services related to the Pencco Iron Salts Plant Project on leased land located at the Corteva Agriscience campus located at 1901 Loveridge Road.

FISCAL IMPACT

Staff is requesting the City Council allocate to the project review budget, the sum of \$119,480 to cover consultant costs related to the processing of the proposed application. The requested budget would cover the \$82,400 cost for CEQA services by RCH Group, Planning & Environmental Consulting Inc. to prepare an Initial Study/Mitigated Negative Declaration (IS/MND), as well as \$24,720 for the 30% City Environmental Review services fees in accordance with the City's Master Fee Schedule effective January 1, 2024, and approximately \$12,360 as 15% refundable contingency reserve funds.

Prior to execution of any consultant contracts, the developer, Pennco Inc. would be required to execute a reimbursement agreement with the City and provide funds to cover the base cost. As such, there is no fiscal impact to the City.

RECOMMENDATION

Staff recommends the City Council adopt the Resolution authorizing the City Manager to execute the Consulting Services Agreement with RCH Group, Planning & Environmental Consulting, Inc. for preparation of CEQA Analysis and related services for the Pencco Iron Salts Plant Project.

BACKGROUND

On December 12, 2023, Pencco Inc., a national provider of wastewater and drinking water treatment products, filed a development application for a Use Permit and Design Review to build a new manufacturing plant for iron salts, on leased land at the Corteva Agriscience campus located at 1901 Loveridge Road.

The site is zoned as IG (General Industrial) and the project would aim to relieve Northern California chemical supply issues. This project would help stabilize the supply of adequate water treatment products and secure safe, clean water for Northern California communities.

SUBCOMMITTEE FINDINGS

The item was not presented to a subcommittee.

STAFF ANALYSIS

Staff has determined that the IS/MND to be prepared by RCH Group, Planning & Environmental Consulting, Inc. pursuant to CEQA are necessary for the continued processing of the applications due to the complexity of the project. Prior to entering into any contract, the City will require a fully executed reimbursement agreement submitted by the applicant.

ATTACHMENTS:

1. Resolution
2. Contract and Services Agreement RCH Group with Exhibits

Report Prepared By: Maurice Brenyah-Addow, Senior Planner

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF PITTSBURG AND
RCH GROUP, PLANNING & ENVIRONMENTAL CONSULTING**

THIS Agreement ("Agreement") for consulting services is made by and between the City of Pittsburg, a municipal corporation ("City") and RCH Group, Planning & Environmental Consulting, a California corporation ("Consultant") (together referred to as the "Parties") as of April 15, 2024 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on April 15, 2026 or the date the Consultant completes the services specified in Exhibit A, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, requests in writing the reassignment of any such persons to ensure Consultant performs services in accordance with the Standard of Performance, Consultant shall, immediately upon receiving City's request, reassign such persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided herein above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed Eighty-Two Thousand, and Four Hundred dollars (82,400), as set forth in Exhibit B, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. A reserve contingency fee of Twelve Thousand, Three Hundred and Sixty dollars (\$12,360) has been included in this task to perform any additional studies or extra work that is needed

as a result of additional comments that may be received as a result of the preparation of the CEQA Environmental Clearance Document. The contingency reserve funds shall only be accessed as determined by staff necessary to complete the CEQA Environmental Review.

This dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement. Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information, unless waived by the City Manager, or his or her designee:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall pay undisputed invoices that comply with the above requirements within 30 days from the receipt of the invoice.

- 2.3 Final Payment.** Consultant shall submit its final invoice within 60 days of completing its services. Consultant's failure to submit its final invoice within this 60 day period shall constitute Consultant's waiver of any further billings to, or payments from, City.
- 2.4 Reimbursable Expenses.** Reimbursable expenses, if any, are specified in Exhibit B and included in the total compensation referenced in Section 2. Expenses not listed in Exhibit B are not chargeable to, or reimbursable by, City.
- 2.5 Payment of Taxes.** Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.
- 2.6 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written authorization from the City Manager, or his or her designee.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement

Section 4. INSURANCE REQUIREMENTS. Before beginning any services under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall be fully responsible for the acts and omissions of its subcontractors or other agents.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.
- 4.2 Commercial General and Automobile Liability Insurance.**

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.
- b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant’s insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.
- c. For any claims related to this Agreement or the work hereunder, the Consultant’s insurance covered shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant’s insurance and non-contributing.

- d. The policy shall cover inter-insured suits and include a “separation of Insureds” or “severability” clause which treats each insured separately.
- e. Consultant agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 per occurrence or claim covering the Consultant’s errors and omissions.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Submittal Requirements. Consultant shall submit the following to City prior to beginning services:

- a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
- b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

4.4.2 Acceptability of Insurers. All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.3 Deductibles and Self-Insured Retentions. Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than \$100,000.

4.4.4 Wasting Policies. No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

4.4.7 Excess Insurance. If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole

option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 General Indemnification. Consistent with California Civil Code Section 2782.8, Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless City, and its employees, officials, and agents, from any and all demands, losses, claims, costs, liabilities, and expenses for any damage, injury, or death, including any and all administrative fines, penalties, or costs imposed as a result of an administrative proceeding, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. If requested by City, Consultant shall defend any such suits at its sole cost and expense. If City elects to provide its own defense, Consultant shall reimburse City for any expenditures, including reasonable attorneys' fees and costs. Consultants' obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of City or any other person; provided, however, that Consultant will not be required to indemnify, including the cost to defend, City for the proportion of liability a court determines does not arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. This Section **5.1** shall survive any expiration or termination of this Agreement.

5.2 PERS Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City.
- 6.2 Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder. Consultant shall also, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.
- 7.3 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.
- 7.4 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not

limited to the satisfaction of any positive obligations required of Consultant thereby.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** Upon ten days' prior written notice, City may cancel this Agreement at any time and without cause upon such written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.
- 8.2 Amendments.** The parties may amend this Agreement only by a writing signed by the parties hereto.
- 8.3 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City Manager, or his or her designee. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the City Manager, or his or her designee.
- 8.4 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant, including but not limited to the provisions of Section 5, shall survive the termination of this Agreement.
- 8.5 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.5.1 Immediately terminate the Agreement;

- 8.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- 8.5.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- 8.5.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.
- 8.5.5 The remedies mentioned in this Agreement are not exclusive of any other right, power or remedy permitted by law. The City's failure or delay in exercising any remedy shall not constitute a waiver of such remedy or preclude the further exercise of City's rights.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All final versions of reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement, and the City may use, reuse or otherwise dispose of the documents without Consultant's permission. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential drafts and will not be released to third parties by Consultant without prior written approval of City.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be made available for inspection, audit,

and/or copying at any time during regular business hours, upon oral or written request of the City. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in Contra Costa County or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

10.7 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.8 Notices. Any notice, demand, request, consent or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, or (ii) certified United States mail, postage prepaid, return receipt requested, Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable.

Consultant: RCH Group, Planning & Environmental Consulting
6521 Chesbro Circle
Rancho Murieta, CA 95683
ATTN: Paul Miller

City: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
ATTN: City Manager

10.9 Professional Seal. Where applicable in the determination of the City Manager, or his or her designee, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility."

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent there are any inconsistencies between this Agreement, the Exhibits, and Consultant's proposal, the Agreement shall control. To the extent there are any inconsistencies between the Exhibits and the Consultant's Proposal, the Exhibits shall control.

Exhibit A Scope of Services
Exhibit B Compensation Schedule

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

10.13 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any third parties.

The Parties have executed this Agreement as of the Effective Date.

CITY OF PITTSBURG

CONSULTANT

Garrett Evans, City Manager

Paul Miller, Managing Principal

Approved as to Form:

Donna Mooney, City Attorney

EXHIBIT A

SCOPE OF SERVICES

RCH shall perform the following items for the Scope of Work (SOW) for the Pencco Iron Salts Plant Project.

Task 1: Kick-off Meeting

The “kick-off” meeting includes RCH, the Applicant team and the City. It is anticipated to include a virtual meeting to minimize costs. All parties will discuss the Project components and confirm the impacts that will be addressed in the CEQA document. RCH will also prepare a data request for any missing data items needed to complete the Initial Study.

Task 2: Prepare Administrative Draft Initial Study

RCH will prepare an Initial Study Checklist (2019 *CEQA Guidelines* revisions of the CEQA Appendix G Checklist) to determine potential impacts. If no significant impacts are identified, or if mitigation measures can be identified for all potentially significant impacts and the Applicant agrees to implement them, then the City can circulate a proposed ND or MND. It is expected that the Project would have minimal effects for many of the resource categories considered in the Initial Study Checklist. We have preliminarily identified the following issues for a more thorough analysis in the Initial Study.

Areas that will need a thorough discussion /evaluation include:

- Air Quality (including Health Risk Assessment) & Greenhouse Gas (GHG) Emissions
- Cultural Resources/ Tribal Cultural Resources
- Geology/Soils
- Hydrology/Water Quality
- Hazardous Materials

Task 3: Prepare Public Draft Negative Declaration or MND

RCH will respond to City comments on the Administrative Draft ND or MND (and Applicant comments, as appropriate, if they review the Administrative Draft document) and prepare a revised version of the document for public distribution.

Task 4: Circulate CEQA Document

In coordination with the City, RCH will assist in preparation (if necessary) of a Notice of Intent (NOI) to adopt a ND or MND according to CEQA Guidelines 15070. RCH will also assist the City with any other CEQA noticing tasks the City requests, such as preparation of the Notice of Completion (NOC), State Clearinghouse Summary Form, and posting on the State Clearinghouse on CEQAnet.com.

Task 5: Response to Public Comments

RCH will respond to public comments received during the Draft CEQA document public review period. At this time there is no way to estimate the level of public comments, however, based upon the level of comments for recent projects in the City of Pittsburgh, 80 hours of staff time is included in this proposal to respond to comments for budgeting purposes. A more precise level of effort would be negotiated if needed, when all comments are received.

Task 6: Planning Commission Meeting (Additional Meetings)

RCH's Project Manager (Dan Jones) will be in attendance at the kickoff meeting. RCH also assumes the following meetings as part of this SOW:

Bi-weekly conference call meetings (or Zoom calls) with staff.

RCH will attend the Planning Commission Meeting for the proposed Project. At the Meeting, RCH will be able to answer questions and provide CEQA support for City Staff.

RCH's cost proposal includes the kick-off meeting and the one Planning Commission Meeting, if additional meetings are required, they will be invoiced on a time and materials basis with prior approval from the City and Applicant.

Task 7: Project Management

This task includes all project management tasks necessary for completion of the Project including scheduling, bi-weekly meetings, budgeting, invoicing, and coordination.

EXHIBIT B **COMPENSATION SCHEDULE**

Table 1. Cost Estimate Iron Salts Manufacturing Facility CEQA Initial Study		RCH Group														RCH TOTAL COSTS
		Labor Effort								Direct Costs						
											Other					
		Dan Jones	Paul Miller	Richard Grassetti (GECO)	Mike Ratte	Luis Rosas	Graphics	RCH HOURS	RCH LABOR COSTS	Sutro Science P.H. & J.T.	Solano Archaeological	Volmar Consulting	Travel & Misc. Expenses	Total Direct Costs plus		
RCH Staff:																
Employee category bill rate: (\$/hr)		\$135	\$170	\$170	\$160	\$100	\$140								10%	
TASKS:		(Hours per person per task)														
1. Project Kick-Off Meeting (1) and Data Request		16	4			4		24	\$3,240				\$91	\$100		\$3,340
2. Administrative Draft Initial Study Preparation		24	8	12			12	56	\$8,320				\$91	\$100		\$8,420
Air Quality and GHG Emissions		32			75			107	\$16,320						\$0	\$16,320
Hazards and Hazardous Materials		2				1		3	\$370	\$5,250					\$5,775	\$6,145
Hydrology/Water Quality		2				1		3	\$370	\$4,900					\$5,390	\$5,760
Geology/Soils		2				1		3	\$370	\$3,850					\$4,235	\$4,605
Cultural Resources/Tribal Cultural Resources		2				4		6	\$670		\$7,000				\$7,700	\$8,370
Other Minor Resource Sections		12				44		56	\$6,020						\$0	\$6,020
3. Prepare Public Draft ND or MND		16	2	3		12		33	\$4,210						\$0	\$4,210
4. Circulate CEQA Document		16				8		24	\$2,960						\$0	\$2,960
5. Response to Comments on CEQA Doc. (NTE 80 hours)		30	15	15		20		80	\$11,150						\$0	\$11,150
6. Planning Commission Hearing (1)		8						8	\$1,080				\$91	\$100		\$1,180
7. Project Management		24	4					28	\$3,920						\$0	\$3,920
TOTAL EFFORT (Hours)		186	33	30	75	95	12	431								
TOTAL COSTS (\$)		\$25,110	\$5,610	\$5,100	\$12,000	\$9,500	\$1,680		\$59,000	\$14,000	\$7,000	\$0	\$273		\$23,400	\$82,400

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANT

By: _____

Title: _____

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter Of:

Authorizing the Execution of Consulting)
Services Agreement with RCH Group,)
Planning & Environmental Consulting)
Inc. for the Pencco Iron Salts)
Plant Project.)

RESOLUTION NO. 24-

WHEREAS, on December 12, 2023, Dillon Blaine of Pencco Inc. (Developer) a national provider of wastewater and drinking water treatment products, filed development application No. 23-0167 for a Use Permit and Design Review titled "Pencco Iron Salts Plant Project", to build a new iron salts manufacturing plant, on a leased parcel of land within the Corteva Agriscience campus located at 1901 Loveridge Road; and

WHEREAS, the City selected RCH Group, Planning & Environmental Consulting Inc. from its On-Call CEQA & NEPA Consultants list and intends to enter into contract for environmental review services pursuant to the California Environmental Quality Act (CEQA); and

WHEREAS, Developer will be required to deposit the sum of \$119,480 with the City, as Initial Deposit for the City to use for the cost of project management and environmental review services provided by RCH Group, Planning & Environmental Consulting, Inc. with the following breakdown:

- a) \$82,400 for CEQA Consultant fees,
- b) \$24,720 for City Environmental Review services fees in accordance with the City's Master Fee Schedule effective January 1, 2024, and
- c) \$12,360 as refundable contingency reserve funds.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes the City Manager to execute a Consulting Services Agreement with RCH Group, Planning & Environmental Consulting, Inc. in an amount not to exceed \$119,480 upon completion of a reimbursement agreement with the Developer and allocates \$82,400 to the consultant budget along with \$12,360 for refundable contingency reserve funds.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 15th day of April 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

ATTEST:

Juan Antonio Banales, Mayor

Alice E. Evenson, City Clerk



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565**

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of Seven City Council Resolutions to Find Developers in Compliance with their Respective Development Agreements for: Southwest (San Marco), Tuscany Meadows, Trans Bay Cable, Edgewater, Sky Ranch II, Montreux, and Columbia Solar

MEETING DATE: April 15, 2024

EXECUTIVE SUMMARY

State law requires local jurisdictions to conduct a periodic review of active development agreements (DA) within the community. For the calendar year 2023, staff has conducted reviews of seven active DAs, including: Southwest (San Marco) Development, Tuscany Meadows Subdivision, Trans Bay Cable, Edgewater Development, Sky Ranch II Subdivision, Montreux Subdivision, and Columbia Solar. Staff has found each developer to be in compliance with the terms of their respective DA, and as such, recommends the City Council adopt seven resolutions finding good faith compliance and authorizing the City Manager to execute Certificates of Compliance as appropriate.

FISCAL IMPACT

None. The City has adopted fees to recover staff costs associated with processing periodic reviews of Development Agreements, and as such, each developer will reimburse the City for the staff time required.

RECOMMENDATION

City Council adopt the seven attached resolutions finding:

- 1) SEECON Financial and Construction Co., Inc., in good faith compliance with the San Marco DA; and
- 2) SEECON Built Homes, Inc., in good faith compliance with the Tuscany Meadows DA; and
- 3) Trans Bay Cable, LLC, in good faith compliance with the Trans Bay Cable DA; and
- 4) Sunnyside Pittsburg, LLC, in good faith compliance with the Edgewater Apartments DA; and
- 5) SkyRanch Land Investors, LLC, in good faith compliance with the Sky Ranch II DA; and

- 6) Altec Homes, Inc., in good faith compliance with the Montreux DA; and
- 7) Columbia Solar, in good faith compliance with the Columbia Solar DA.

BACKGROUND

California Government Code Section 65864 *et seq.* authorizes and regulates the execution of development agreements between Cities and persons who desire to develop property within the City's jurisdiction. Pursuant to the law, the City establishes procedures for the consideration of the DA applications, as well as procedures for reviewing the DAs. State law also requires the periodic review of a development agreement, at which time the Developer must demonstrate good faith compliance with the terms of the DA.

The last periodic reviews were conducted by the City in 2022 for the seven DAs listed above and three others (Liberty, Belle Harbor, and Greystone) that have since been terminated.

STAFF ANALYSIS

If the City Council finds that the respective developers are in compliance with their respective DA's, then the City would issue a "Finding of Compliance" for each project, which may be recorded against the properties. If, as a result of the review, the City Council finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of their DA, then the City may terminate or modify the associated DA. Pursuant to the City's procedures, the City would then issue a "Finding of Non-Compliance," identifying the areas of non-compliance, the terms of compliance and a time period for the Developer to bring the project into compliance with the DA.

At this time, all current issues associated with each DA reviewed have either been addressed or will be addressed when appropriate by the respective developer or are being addressed in coordination with the developer on an on-going basis. As such, staff recommends the adoption of all seven proposed resolutions, finding good faith compliance by Developers with the terms of the DAs.

ATTACHMENTS:

1. Resolution for San Marco
Exhibit 1 – San Marco 2023 Summary Table
2. Resolution for Tuscany Meadows
Exhibit 1 – Tuscany Meadows 2023 Summary Table
3. Resolution for Trans Bay Cable
Exhibit 1 – Trans Bay Cable 2023 Summary Table
4. Resolution for Edgewater
Exhibit 1 – Edgewater 2023 Summary Table
Edgewater Recorded Development Agreement (full text)
5. Resolution for Sky Ranch
Exhibit 1 – Sky Ranch 2023 Summary Table
6. Resolution for Montreux
Exhibit 1 – Montreux 2023 Summary Table
7. Resolution for Columbia Solar
Exhibit 1 – Columbia Solar 2023 Summary Table

Report Prepared By: Maurice Brenyah-Addow

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Southwest (San)
Marco) Development Agreement)
Between The City of Pittsburg and)
Seecon Financial and Construction)
Co. Inc. and Determination as to)
Compliance With Development)
Agreement)

RESOLUTION NO. 24-

WHEREAS, a Development Agreement between the City of Pittsburg and Seecon Financial and Construction Co., Inc., was recorded on August 1, 1990, for the Southwest (San Marco) Development Area; and

WHEREAS, a 1st Amendment to the Development Agreement was executed on November 1, 2001; and

WHEREAS, a 2nd Amendment to the Development Agreement was executed on July 19, 2010; and

WHEREAS, a 3rd Amendment to the Development Agreement was executed on April 8th, 2013; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DA") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Southwest (San Marco) Development Agreement was conducted, and on May 1, 2023, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburg finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and staff, as well as the information contained in the "San Marco DA – 2023 Annual Review" summary table, attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Southwest (San Marco) Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Southwest (San Marco) Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 15th day of April, 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit - 1 - San Marco DA - 2023 Annual Review Summary Table

Condition/Requirement	Status	Comments	Action Items
To strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the public and private economic risks of development, the Legislature of the State of California adopted Sections 65864 et seq. of the Government Code ("Development Agreement Statute") which authorizes City to enter into a development agreement with a person having a legal or equitable interest in real property, for the development of property. Under the authority of the Development Agreement Statute, City adopted Resolution No. 89-7466 on June 5, 1989, establishing procedures and requirements for the consideration of development agreements.	Not Applicable		
Developer is the owner of approximately 639± acres of property located near the City of Pittsburg, within Contra Costa County and described more specifically in Exhibit "A" attached (the "Property") located within the Southwest area described in paragraph E.	Not Applicable		
It is the intent of City and Developer to establish certain development rights in the Property which will be the subject of property development applications and this Development Agreement.	Not Applicable		
Developer desires to develop and construct on the Property, in phases, a complex of buildings for 2938 single and multifamily residential units plus walk and bicycle paths, play and picnic areas, park areas, and similar open spaces, swimming pools, parking facilities, interior roadways and other related infrastructure improvements (collectively the "Project").	Not Applicable		
On May 4, 1987, by Resolution No. 87-7138, the City Council determined that the approximately 639± acre area located adjacent and contiguous to the southwest boundary of City ("Southwest Area") should be included in the Pittsburg sphere of influence and then annexed and developed as part of City.	Not Applicable	On 7/19/10, the City Council approved the 2nd Amendment to the Southwest DA (Ordinance No. 10-1326), which revised the map exhibit of the DA to remove 1.41 acres for which the developer intended to pursue commercial rather than residential land use entitlements (gas station).	
On June 15, 1987, by Resolution No. 87-7202, the City Council of City determined, on the basis of mutual interests of City and property owners in the Southwest Area, that City would enter into development agreement(s) with property owners in that area. The agreements are intended to insure orderly urbanization and the housing needs of existing and future City residents in a manner which makes maximum utilization of resources and reduces economic costs of development.	Not Applicable		
On August 3, 1987 by Resolution No. 87-7209, City adopted a General Plan amendment to the Southwest Area. On September 6, 1988, by Resolution No. 88-7357 the City adopted an updated General Plan. The General Plan established goals, objectives, policies and criteria to guide the development of this area, and it is the parties' intent that this area be developed consistent with those land use categories specified in the Land Use Element Map of the General Plan and applicable land use regulations as modified herein.	Not Applicable		
Developer intends to develop the Property which is described in Exhibit "A" in accordance with this Agreement.	Not Applicable		
The Southwest Area has been studied and the City has determined that development of the area must be done in an environmentally sensitive manner. City and Developer recognize that its particular development requires coordi-nation and compliance with the City General Plan, but that certain aspects of developing the Property will require flexibility and variation from other applicable City land use regulations will be necessary and appropriate to implement the Project. To the extent that the proposed Project, (as described in paragraph D above and as shown on the Land Use Element of the General Plan), differs from the current zoning regulations, the provisions of this agreement shall prevail.	Not Applicable		
In accordance with the California Environmental Quality Act ("CEQA"), City will prepare and adopt the appropriate environmental documents for the administration of this Development Agreement and the approvals necessary to carry out the Project.	Compliant	A Subsequent Environmental Impact Report (SEIR, SCH #91073029) was prepared for the San Marco Development Plan Area and certified by the Planning Commission on October 13, 1992.	

Exhibit - 1 - San Marco DA - 2023 Annual Review Summary Table

The Property proposed for the Project is presently located in the unincorporated territory of the County of Contra Costa but within the City's sphere of influence. In accordance with section 65865(b) of the Development Agreement Statute, City and Developer may enter into a Development Agreement before annexation, provided that the Agreement shall not become operative unless annexation of the Property to the City is completed within the period of time specified by the Agreement or by any extension of time provided for by the Agreement. City and Developer desire to complete annexation as soon as possible.	Not Applicable		
By entering into this Agreement, City has determined it is in the City's public interest and the interest of its citizens to do so.	Not Applicable		
Following compliance with CEQA and after conducting duly noticed public hearings, the Planning Commission recommended approval and the City Council approved this Agreement, authorized its execution and found that this Agreement is consistent with the General Plan. The Agreement was approved by City Ordinance No.	Not Applicable		
Development of the Project in accordance with this agreement and subsequent discretionary approvals will provide for orderly growth conformance with the policies and goals set forth in the General Plan in accordance with paragraph "G" and "I".	Not Applicable		
For the reasons recited, Developer and City have determined that the Project is a development for which this Agreement is appropriate. This Agreement eliminates uncertainty in planning for and in securing orderly development of the Project. Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing ordinances, resolutions and regulations as of the effective date of this agreement and subject to the terms and conditions in this Agreement, and subject to review and approval and the grant of land use entitlements by the appropriate reviewing body (Planning Commission or City Council) as to each specific proposal for development.	Not Applicable		
By entering into this Agreement, City recognizes and hereby acknowledges that approvals herein constitute a present exercise of the governmental authority of City.	Not Applicable		
Operative date of Agreement. Under Government Code section 65856(b), the annexation of Property to City must occur on or before July 1, 1993. This agreement does not become operative unless annexation is complete by that date. The parties may, however, extend this completion date for annexation beyond July 1, 1993.	Compliant		
Term. The duration of this Agreement shall extend to October 1, 2032, unless terminated, modified or extended by mutual written consent of the parties.	Compliant	On 10/1/01, the City Council approved the 1st Amendment to the Southwest DA to extend its term from the original horizon year of 2002 to an amended horizon year of 2020 (Ordinance No. 01-1187). On 4/15/13, the City Council approved the 3rd Amendment to the DA which extended the term of the DA from its prior expiration year of 2020 to a new expiration year of 2032 in exchange for a revision to the developer's park obligations and a \$10,000 annual payment for development agreement compliance reviews.	
Effect of Agreement on Land Use Regulations			
Permitted Uses. The permitted uses of the property are those uses designated in the Land Use Element of the General Plan adopted on September 6, 1988. A copy of the Land Use Element Map is attached as Exhibit "B".	Compliant		

Exhibit - 1 - San Marco DA - 2023 Annual Review Summary Table

Density and Land Use Intensity. At its option, the Developer may construct up to a maximum of 2,938 residential units consisting of a mix of single-family and multiple-family residential units as shown on the General Plan Map attached as Exhibit "B". The location and configuration of lots is subject to City's review and approval under the Subdivision Map Act. The parties recognize that in order for the project site to accommodate up to 2,938 mixed residential units, grading in excess of that permitted under the applicable Hillside regulations will be necessary. City agrees that in its review and approval of Developer's grading plans, it shall permit additional grading, which is necessary to construct infrastructure and building pads to effectively and efficiently accommodate the maximum number of units Developer is permitted and proposes to construct, subject to the normal property development process of the City.	Compliant	Plot plans continue to be reviewed for conformance with the approved vesting tentative map. As of the date of this periodic review, Villages A, B, E, F, G, H, J, K, and L have been completed. Village D (Positano at San Marco) is under construction. Villages C, M, N, and O have not been constructed yet.	
Applicable Land Use Regulations. Except as provided in subparagraph (b) relating to density and grading, the land use regulations applicable to the project shall be those land use regulations in effect on the date this agreement is entered into. The rules, regulations and policies governing the approval and the design, improvement and construction standards and specifications applicable to development of the property shall be those rules, regulations and policies in force on the date this Agreement is entered into except as specifically provided in this Agreement (e.g., subparagraphs (d) and (e) of this para graph).	Compliant		
Application of Building Codes. Developer is subject to changes in the Uniform Building Codes occurring from time to time subsequent to the date this Agreement is entered into which are not inconsistent with subparagraphs (a) and (b) of this para- graph and if the changes (i) are found by the City Council to be in the best interest of the health and safety of its citizens and (ii) are applicable to all other developments in the City.	Compliant		
Subsequent Land Use Entitlements. In subsequent land use entitlement actions concerning the property, the City may only apply those existing rules, regulations and policies that were in force and effect on the effective date of this Development Agreement with respect to the property.	Compliant		
Fees, Charges and Assessments.			
City to Adjust Existing Fees. City recently adopted a new fee schedule for fees and charges which it levies in connection with land use entitlements, including subdivisions. Developer agrees that this new fee schedule (attached to this agreement as Exhibit "C") will govern the fees and charges applicable to the project and that it is the intent of the City not to impose additional fees, exactions, dedications or regulations through the exercise of the police power or the taxing power unless they are solely for unanticipated health and safety reasons as a direct result of this project and are consistent with Government Code Sections 66000 et. seq. Any additional fees shall in no event include, for example: child care, public art, libraries, community centers or other similar fees not essential to health and safety. The limitations on fees contained in this subparagraph shall not preclude the City from instituting procedures to impose taxes or assessments on the property (as opposed to development fees) pursuant to districts which may be formed under the provisions of by way of example, the Community Facilities Financing Act (Mello- Roos), or Limited Obligation Revenue Bonds (Marks-Roos) or the Landscaping Lighting and Maintenance Act. The Developer hereby reserves the right to protest the formation of and the participation of the property in any such district.	Compliant		
Exceptions to Limitations on City's Right to Impose Fees, Taxes, and Assessments. Notwithstanding subparagraph (a) of this section limiting the right of the City to impose fees, charges, and assessments in connection with land use entitlements and subdivisions, the City may impose the following additional fees consistent with Government Code section 66000 et seq., and taxes and assessments without protest from the developer: (i) a fee imposed or mandated by another governmental agency; or (ii) a fee imposed for citywide traffic or drainage mitigation purposes; or (iii) a fee in the form of a capital improvement facility fee for sewer purposes or water purposes. (iv) an assessment to be imposed on residential units pursuant to a Mello Roos or Marks Roos District for the exclusive purpose of providing police services to the property. (v) an assessment imposed for the benefit of the property pursuant to the Landscape Lighting and Maintenance District Act.	In Progress	Fees, taxes, and assessments the City currently imposes on projects within the San Marco PD area include: Facilities Reserve Charge (PMC Chapters 13.08, 13.12, and 13.24) for water and sewer service; Local Transportation Mitigation Fee (PMC Chapter 15.90); Regional Transportation-Development Impact Mitigation Fee (PMC Chapter 15.102); In-Lieu Parkland Dedication Fee; Community Facilities District 2007-01 for park maintenance; and Community Facilities District 2004-1 for police services.	

Exhibit - 1 - San Marco DA - 2023 Annual Review Summary Table

Consumer Price Index Adjustment. At the end of one year from the date this agreement becomes operative (see paragraph I) and annually thereafter during the term of this agreement, the City may adjust the fees and charges imposed upon Developer to reflect the increase, if any, in the Consumer Price Index (San Francisco/Oakland) as published by the Bureau of Labor Statistics, US Department of Labor, by comparing the Index figure nearest to the time of execution of this agreement to the Index figure nearest to the expiration of each one year period.	Compliant		
Application of CEQA. The parties acknowledge that this agreement and Developer's project is subject to CEQA. The parties also acknowledge that the City has previously had prepared and certified an EIR for the proposed change in the City's sphere of influence in the Southwest Hills, the annexation of the area to the City and the General Plan Amendment applicable to the Southwest Hills. City shall treat that EIR as a program EIR against which Developer's future activities under this Agreement will be examined for the need of additional environmental review and analysis as Developer seeks land use entitlements to carry out the Project.	Compliant	A Subsequent Environmental Impact Report (SEIR, SCH #91073029) was prepared for the San Marco Development Plan Area and certified by the Planning Commission on October 13, 1992.	Developer has agreed to conduct pre-construction biological surveys to ensure, in concert with the City, that there will be no impact to federal, state or locally listed habitat or species.
Commencement of Construction. It is the desire of Developer and City that Developer begin construction upon annexation after the securing of all discretionary entitlements. Developer agrees to begin and complete, with due diligence, all major infrastructure including arterial roadways, storm drainage facilities, sewer trunk lines and water main lines within six (6) years of annexation. Developer agrees to submit all necessary applications for approval by the City within six (6) months of annexation and City agrees to act upon the project within one (1) year from the submittal of all completed applications.	See Comments/Action Items	Developer did not complete the improvements within the 6 years required due to a variety of reasons, many outside of their control. In 1993, the City and Developer entered into a Memorandum of Understanding to resolve this issue.	
Phasing. Developer may accomplish construction on the Project in phases. However, Developer shall construct each phase in such fashion that construction of a single phase does not exceed two years to complete.	Compliant		
Conditions, Terms and Restrictions.			
City agrees to cooperate and use its best efforts to cooperate with Developer in processing applications for land use entitlements including all zoning, building, and grading permits necessary to implement the Project.	Compliant		
Developer is responsible for obtaining all land use entitlements, permits and approvals which may be required by City and other governmental entities for development of the Property. City agrees to cooperate with Developer and support Developer's efforts in obtaining any such necessary permits and approvals. City further agrees to, from time to time at the request of Developer, enter into agreements with any such entity when such agreements are essential for development of the Project and there is no cost or liability to City. Such agreements may include, but are not limited to, joint powers agreements pursuant to the provisions of the Joint Exercise of Powers Act (Government Code section 6500, et seq.), or the provisions of other laws, in order to create agreements between such parties. To the extent allowed by law, Developer shall be a party to any such agreement, or a third party beneficiary thereof, entitled to enforce for its benefit on behalf of City or in its own name, the rights of City or Developer thereunder or the duties and obligations of the parties thereto.	Compliant		
Cooperation-Implementation. Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, the parties shall promptly commence and diligently proceed to complete all required steps necessary for implementation of this Agreement and the development by Developer of the Project Site including, but not limited to the following:	Compliant		
All required public hearings	Compliant		

Exhibit - 1 - San Marco DA - 2023 Annual Review Summary Table

The processing and checking of all maps, plans, land use permits, building plans and specifications and other plans relating to the development of the Property, filed by Developer, including, but not limited to, all Annexations, General Plan amendments, zoning, final development plans, tentative maps, parcel maps, final maps, grading plans, subdivision improve- ment plans, agreements, lot line adjustments, encroachment permits, formation of assessment/benefit districts and related matters as necessary for the completion of the development of all lots and parcels comprising the Property. In this regard, Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and cause Developer's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents thereof. Developer to pay cost of all professional support (including testing) for the project as determined by the Community Development Director/City Engineer. It is the express intent of this Agreement that all parties cooperate and diligently work to implement any General Plan amendment, zoning, filing of any tentative or final subdivision map or other land use or building approvals or grading plans and improvement plans for development of the Property in accordance with Exhibit "B".	Compliant		
Conditions and Dedications. Developer shall make only those dedications and comply with only those conditions expressly prescribed in this Agreement or in force and applicable to the property as of the effective date of this Agreement subject to the following:	Compliant		
Development Fees. The City may charge development fees for land use approvals, building permits and other similar permits and entitle ments which fees are not to exceed those in force and effect as of the effective date of this Agreement; subject to section 4(b).	Compliant		
Additional Fees. In no event shall any additional fees be imposed upon the Property except as expressly provided in this Agreement. Furthermore, the conditions, exactions, dedications, fees or regulations applicable to the Property shall not be subject to modifications or renegotia- tion by City as a result of an amendment of this Agreement, or as a result of the filing of any new entitlement application including but not limited to a land use permit, rezoning, general plan amendment, subdivision map, tentative map, tentative parcel map or parcel map, or any resubdivision of the Property (including a merger or lot line adjustment or the creation of new lots within a designated remainder parcel, provided, however, that these provisions shall not exclude the imposition of normal processing fees in effect at the time of the new application, and provided further that the new application shall not result in substantial impacts and further that all new entitlement requests shall be subject to the property development process of the City.	Compliant		
Dedications. Upon completion of the improvements and construction in accordance with City standards for the facilities referred to in this paragraph, Developer agrees to dedicate such facilities, including all in- terior subdivision streets and other public improvements, in accordance with tentative and final map approvals which shall be consistent with Exhibit "B" and this Agreement. Developer will convey to City, by Grant Deed, the park, path areas, and other public rights of way in accordance with this paragraph. The City specifically reserves the right to accept, or reject, such offers of dedication.	Compliant		
Construction of Facilities and Infrastructure In-Lieu of the Payment of Fees; Reimbursements; Assessment District and Benefit Districts.			
Williamson Act Fees. Upon completion of annexation of the Property, and if the City has the authority it shall act as the lead agency in administering the cancellation of the Williamson Act contract which affects a portion of the Property. If the City does not have this authority, the City shall use its best efforts to support cancellation of the contract in accor- dance with applicable rules and regulations and shall apply any fees which it receives in connection therewith toward public improvements and facilities to benefit the Property. The City's decision in how to apply these funds is final.	Compliant		

Exhibit - 1 - San Marco DA - 2023 Annual Review Summary Table

Assessment and Benefit District(s). The City agrees to cooperate with the Developer in establishing and implementing an assessment district(s) and benefit district(s) in accordance with applicable laws to finance or reimburse Developer for improvements constructed inside or outside of the Property.	Compliant	Fees, taxes, and assessments the City currently imposes on projects within the San Marco PD area include: Facilities Reserve Charge (PMC Chapters 13.08, 13.12, and 13.24) for water and sewer service; Local Transportation Mitigation Fee (PMC Chapter 15.90); Regional Transportation-Development Impact Mitigation Fee (PMC Chapter 15.102); In-Lieu Parkland Dedication Fee; Community Facilities District 2007-01 for park maintenance; and Community Facilities District 2004-1 for police services.	
Life of Subdivision Maps. Pursuant to Government Code Section 66542.6(a), the term of the tentative maps filed subsequent to the operative date of this Agreement shall automatically be extended for the term of this Agreement (as the term is extended by this Third Amendment).	Compliant	Language from 3rd Amendment to Southwest DA	
Default; Remedies; Termination			
Failure or unreasonable delay by either party to perform any term or provision of this Agreement for a period of ninety (90) days after written notice from the other party shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such time period, then the diligent prosecution to completion of the cure shall be deemed a cure within such a period. Subject to the foregoing, after notice and expiration of the 90-day period without cure, the other party to this Agreement, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and reviewed by City Council within thirty (30) calendar days in the manner set forth in Government Code sections 65865, 65867, and 65868. If City does not accept, review, act upon or issue necessary development permits, entitlements, or other land use or building approvals for use in a timely fashion as required by this Agreement, or as otherwise agreed to by the parties, or the City otherwise defaults under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law.			
In addition to specific provisions of this Agreement, performance by either party is not in default where delays or defaults are due to war, insurrection, strikes, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, judicial decisions, or other basis for excused performance which is not within the reasonable control of the party to be excused. If written notice of such delay is given to either party within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or such longer period as may be mutually agreed upon.			
All other remedies at law or in equity which are not otherwise provided for in this Agreement or in the City's regulations governing development agreements are available to the parties to pursue if there is a breach.			
Changes in Law.			
If state or federal laws or regulations enacted after the effective date of this Agreement prevent or preclude compliance with one or more provisions of this agreement, such provisions of this Agreement shall be modified or suspended only to the extent necessary to comply with such state or federal laws or regulations.	Not Applicable		

Exhibit - 1 - San Marco DA - 2023 Annual Review Summary Table

City agrees that other development approvals within the City shall not diminish Developer's plans for the full development of the Property in accordance with this Agreement, despite increased burden by virtue of other development upon public facilities subject to the provisions of Section 9. Nothing in this subsection (b) shall limit or restrict orders or regulation from the City or other governmental agencies that would affect the rate, timing or sequence of development because of lack of water or sewer infra- structure to accommodate such development (such as water service restrictions imposed by Contra Costa Water District, or similar orders and regulations).	Compliant		
Amendment or Cancellation.			
This Agreement may be amended or canceled in whole or in part, by mutual consent by the parties or their successors in interest. Notice of intention to amend or cancel any portion of this Agreement shall be given in the manner provided by section 65867 of the Government Code. All amendments to this Agreement shall be first approved by ordinance of the City Council in accordance with section 65867.5 of the Government Code.	Compliant		
Notwithstanding the foregoing, an amendment to this Agreement which does not relate to the term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservations of land, conditions, fees for public facilities, terms, restrictions and requirements regarding covenants relating to the use of the property does not require a public hearing before the parties may execute an amendment to this Agreement.	Compliant		
Any non-substantive deviation from the development plan for the Project, as determined by the Director of the Community Development Department, with respect to the location of buildings, streets and other physical facilities, shall not require an amendment to this Agreement.	Compliant		
Annual Review. Annual Review. Each year during the term of this agreement the City shall at the first City Council meeting in September or as soon there- after as the Council agenda permits review the extent of good faith compliance by Developer with this Agreement. This periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement as provided in Government Code section 65865.1. Developer shall pay the City's administrative costs of the annual review process. The fee shall be as fixed by Resolution of City Council. At the review meeting, Developer must demonstrate good faith com- pliance with the terms and conditions of this Agreement under Government Code section 65865.1. At the conclusion of the meeting, City shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer or its successor in interest has complied in good faith with the terms and conditions of this Agreement. If City finds and determines that Developer has not complied with its terms and conditions, City may terminate or modify this Agreement by giving notice of its intention to do so in the manner set forth in Government Code sections 65867 and 65868. In the manner prescribed in Section 27, Notices, the City shall deposit in the mail to Developer a copy of all public staff reports, documents and related exhibits concerning Developers' performance here under at least ten (10) days before each periodic review. Developer shall be permitted an oppor- tunity to respond to the City's evaluation of its performance, either orally at a public hearing or in a written statement, at Developers' election. This response shall be made to the City Council or, if the matter has been referred to the Planning Commission, to the Planning Commission. Beginning in 2013, Developer shall pay the City a fixed sum of \$10,000 each year (adjusted by the San Francisco-Oakland-San Jose Consumer Price Index starting July 1, 2014) for the City to conduct annual review of the Development Agreement starting in 2013. Failure by the City to conduct the annual review required each year shall not be deemed a default by Developer under the Development Agreement; if the City does not conduct the review, the payment shall not be required for that year.	In Progress		
Enforcement. Unless amended or canceled as provided in Section 15, the Agreement is enforceable notwithstanding any change in the applicable General Plan, specific plan, zoning ordinance or regulations, subdivision design/improvement construction standards, specifications and regulations or building regulations adopted by City which alters or amends an ordinance, rule, regulation or policy governing permitted use of the Property, or governing the density and grading as provided in paragraph 3 (a), (b) and (c) of this Agreement.	Not Applicable		
Recordation. Not later than 10 days after execution of this Agreement by all parties, the City Clerk shall record a copy of this Agreement with the Contra Costa County Recorder. From and after the date of recordation, this Agreement imparts notice to all persons under the recording laws of the State.	Compliant		

Exhibit - 1 - San Marco DA - 2023 Annual Review Summary Table

Certificate of Satisfaction. After completion of the Project, City upon request of Developer, shall execute in recordable form and deliver to Developer an instrument certifying that Developer has satisfied all of Developers" obligations under this Agreement.	See Comments/Action Items	Developer may request a Certificate of Satisfaction after completion of the Project.	
Relationship of Parties. It is understood and agreed that the contractual relationship between City and Developer is such that the latter is an independent contractor and in no case an agent of City.	Not Applicable		
Hold Harmless. The Developer agrees to and shall hold the City, its officers, agents, employees and representatives harmless from, and shall defend against, liability for damage or claims for damage for personal injury including death and claims for property damage including inverse condemnation which may arise from its direct or indirect actions or those of its contractors, subcontractors, agents, employees or other persons acting on its behalf, which relate to real property covered by this Agreement, except that the foregoing does not extend to any willful acts committed by the City, its offices, agents or employees. This hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of the actions referred to in this paragraph, regardless of whether or not City prepared, supplied or approved plans or specifications for the project.	Not Applicable		
Cooperation in the Event of Legal Challenge. If legal action is instituted by a third person challenging the validity of any provision of this agreement, developer shall defend that action and pay all costs, expenses and fees associated with the defense. The parties agree to cooperate in defending the action.	Not Applicable		
Assignment. Nothing in this Agreement prevents Developer from conveying all or part of this interest in the property to a buyer, assignee or other nominee as Developer may elect. An assignment or transfer of this agreement other than an affiliate or subsidiary of Developer is subject to City"s prior review and written approval which approval shall not be unreason- ably withheld.	Not Applicable		
Successors. The obligations imposed by this Agreement shall be considered covenants running with the land described in Exhibit "A", in accordance with sections 1460, et seq. of the Civil Code and shall inure to the benefit of, and be binding upon all successive owners of such lands, or parts thereof, during the term of this Agreement, as provided in Section 65868.5 of the Government Code.	Not Applicable		
Validity. If a covenant, condition or term of this Agreement is held by a court to be illegal or in conflict with law, the validity of the remaining portions or provisions are not affected. The parties agree to use their best efforts to defend the validity of this Agreement against the claims of third parties.	Not Applicable		
Attorney's Fees. If legal action is brought by either party for breach of this Agreement or to enforce its provisions, the prevailing party is entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court.Attorney's Fees. If legal action is brought by either party for breach of this Agreement or to enforce its provisions, the prevailing party is entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court.	Not Applicable		
Notice. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the following addresses: City of Pittsburg, 2020 Railroad Avenue, Pittsburg, CA 94565, Attn: City Clerk; Seecon Financial & Construction Co., Inc., 4300 Railroad Avenue, Pittsburg, CA 94565, Attn: Robert J. Rossi or such to other addressee(s) and at such other place as the parties may from time-to-time designate by written notice to each other. Notices, demands and requests which are served by mail in this manner are deemed served or given for all purposes five (5) calendar days after the date the notice, demand or request is mailed.	Compliant		
The headings of sections are used for convenience only and shall not affect the meaning or interpretation of the contents of this Agreement.	Not Applicable		
The laws of the State of California shall govern the inter-pretation and enforcement of this Agreement, and the conduct of the parties.	Not Applicable		
Time is expressly declared to be of the essence in this Agreement and of all terms expressed in it.	Not Applicable		
The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any party. The parties have equally participated in the preparation of this Agreement. The term "assign" shall include the term "transfer". The plural shall include the singular, and the singular the plural. One gender shall include all genders.	Not Applicable		

Exhibit - 1 - San Marco DA - 2023 Annual Review Summary Table

This instrument, along with the attached Exhibits, constitutes the entire Agreement between the Parties relative to this subject matter. This Agreement may be altered, amended or revoked only by an instrument in writing signed by the Parties. No representations whatsoever have been made relative to this subject matter except as may be expressly stated in writing in this Agreement.	Not Applicable		
The waiver by a party of a breach of a term in this Agreement is not a waiver of that term or a subsequent breach of the same or any other term. No custom or practice which may develop between the parties during the term is a waiver of or in any way affects the right of a party to insist upon performance and observance by the other party in accordance with the terms of this Agreement.	Not Applicable		

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Tuscany Meadows)
Development Agreement Between The)
City of Pittsburgh and Seecon Built)
Homes, Inc. and Determination as to)
Compliance With Development)
Agreement)

RESOLUTION NO. 24-

WHEREAS, a Development Agreement between the City of Pittsburgh and Seecon Built Homes, Inc. was executed on February 5, 2018, for the Tuscany Meadows Property; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DA") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Tuscany Meadows Development Agreement was conducted, and on May 1, 2023 the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburgh finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and staff, as well as the information contained in the "Tuscany Meadows DA – 2023 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Tuscany Meadows Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Tuscany Meadows Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 15th day of April, 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit - 1 - Tuscany Meadows DA - 2023 Annual Review Summary Table

DA Section	Condition/Requirement	Status	Comments	Action Items
Article II - Effective Date; Term				
Section 2.01	Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the “Effective Date”).	See Comments/Action Items	On February 5, 2018, the City Council adopted Ordinance 16-1405 approving the Development Agreement between the City of Pittsburg and Seecon Built Homes, Inc. for the Tuscany Meadows property.	
Section 2.02	Term. The term of this Agreement shall commence upon the Effective Date and continue for a period of twenty five (25) years (the “Term”).	See Comments/Action Items	Based on the effective date of February 5, 2018, the DA will expire on February 5, 2043.	
Article III - Obligations of Developer				
	The parties acknowledge and agree that the City’s agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer’s agreement to perform and abide by its long term covenants and obligations, as set forth herein. The parties acknowledge that many of Developer’s long term obligations set forth in this Agreement are in addition to Developer’s agreement to perform all the mitigation measures identified in the Mitigation Monitoring Program. As material consideration for the long term assurances and vested rights provided by this Agreement and as a condition of approval to one or more of the Project Approvals, Developer agrees to each of the following:	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer’s obligations prior to or as part of project development.	
Section 3.01	Drainage Improvements. Subject to the terms of this Agreement, as a condition of approval to one or more of the Project Approvals, Developer agrees to construct and offer for dedication to the City those Project storm water drainage improvements to be located within City’s boundaries and required to serve the Project Site (“Drainage Improvements”). The City shall accept the offer of dedication of the Drainage Improvements, as long as the Drainage Improvements comply with the City’s standards, applicable rules and regulations, and this Agreement. The parties agree that the construction of the Drainage Improvements shall be phased according to a construction schedule determined by Developer, subject to the written approval of the City Manager. City shall not require any improvements to onsite or offsite drainage facilities to address pre-existing deficiencies provided that Developer demonstrates to City’s reasonable satisfaction that impact to downstream facilities are not being exacerbated.	Not Applicable (at this time)		
Section 3.02	Facility Reserve Charges. Developer agrees to pay City’s Facility Reserve Charges (“FRC”) as set or modified by the City Council from time to time.	Not Applicable (at this time)		
Section 3.03	Water Infrastructure. Developer shall comply with the 2015 Water System Master Plan, as amended. Developer shall have the option, subject to the written approval by the City Manager, to provide water infrastructure facilities as specified by the City or to construct the water infrastructure facilities in phases subject to a storage requirement and site analysis study, commissioned by the City, that incorporates the water infrastructure requirements pursuant to the 2015 Water System Master Plan, as amended.	Not Applicable (at this time)		
Section 3.04	School Facilities Impact Mitigation. Developer shall pay in lieu school impact fees in accordance with Government Code §§ 65995 et seq. Compliance with this Section shall satisfy all of Developer’s obligations required by City to mitigate school impacts resulting from the Project.	Not Applicable (at this time)		

Exhibit - 1 - Tuscany Meadows DA - 2023 Annual Review Summary Table

Section 3.05	Applicable Fees. City may levy development fees, and charges during the term of this Agreement relative to the development of the Project Site which are in force and effect as of the Effective Date, as more particularly described and according to the payment schedule set forth on Exhibit B ("Applicable Fees"). Unless otherwise provided in this Agreement, no development fees, or charges, or categories thereof, shall be imposed on the Project other than those fees (including categories within such fees), and charges identified as Applicable Fees on Exhibit B, which exhibit shall exclusively govern the Applicable Fee payment schedule. The parties agree that any and all Project development fees, charges or exactions related to schools, fire prevention, water, sewer, stormwater, and storm drainage facilities, which are to be paid by Developer directly to third-party governmental agencies, are not subject to or within the scope of this Agreement whether such third party charges exist or are subsequently imposed by such third parties, whether directly upon Developer or through City. This provision shall not be construed to benefit any Non-Assuming Transferees, as such term is defined in herein.	Not Applicable (at this time)		
Section 3.06	Applicable Fee Adjustments. Developer shall pay fees and charges consistent with Section 3.05, and the applicable adjustments currently provided in such fees, and as modified from time to time by the City, whether such adjustment or modification is an increase or decrease. Developer retains the right to challenge the imposition of any new fees not referenced in this Agreement or the modification, amendment or adjustment of all Applicable Fees pursuant to Government Code § 66000 et seq., not already authorized by ordinances, resolutions or policies in place at the time of this Agreement's execution. Should the City Council approve a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Not Applicable (at this time)		
Section 3.07	City Local Traffic Mitigation Fee. Developer shall pay the City Local Traffic Mitigation Fee, which fee is necessary to finance unmet City traffic improvement needs in the amount in effect as of the Effective Date and subject to adjustment in accordance with Resolution No. 07-10917 with credit for certain improvements constructed by Developer per Section 4.05 below. If the City Council approves a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Not Applicable (at this time)		
Section 3.08	Regional Traffic Fee. Developer shall pay the ECCRFA regional traffic fee should it be imposed by the City in an amount equal to or less than the amount paid by projects in the Cities of Antioch, Brentwood, and Oakley or in accordance with the existing valid Memorandum of Understanding dated June 29, 2010, as amended, whichever is less.	Not Applicable (at this time)		

Exhibit - 1 - Tuscany Meadows DA - 2023 Annual Review Summary Table

Section 3.09	Fees, Assessments and/or Taxes to be Paid by Developer. Developer agrees to pay its fair share of any levies imposed by any assessment district, geologic hazard abatement district, landscaping and lighting district, community facilities district, tax-exempt financing mechanisms, or other funding mechanisms related to public safety; traffic; sewer; water; fire; the prevention, mitigation, abatement, or control of geologic hazards; or other infrastructure improvements (including, without limitation, design, acquisition, construction and maintenance costs) (collectively, "Funding Mechanisms") within the Project Site, provided that such Funding Mechanism is referenced herein and/or was legally created pursuant to applicable law.	Not Applicable (at this time)		
Section 3.10	Affordable Housing. Developer shall comply with PMC 18.86.080 and VTM Condition of Approval No. 5 by constructing at least ninety two (92) rental attached accessory units within the Project. A covenant shall be recorded limiting the amount of rent that may be charged for these secondary units, consistent with the terms and conditions set forth in the affordable housing agreement. Forty six (46) of these units shall be constructed no later than the City's issuance of the four hundred and fiftieth (450th) building permit for the Project. Prior to the City's issuance of the first certificate of occupancy Developer agrees to enter into an affordable housing agreement with the City (the "Affordable Housing Agreement") which further memorializes the provisions of this Section 3.10 and is consistent with applicable law, including Pittsburg Municipal Code Chapter 18.50. Developer agrees that the attached accessory units referenced in this Section shall not be built or otherwise allowed on adjoining lots without the prior written approval of the City Manager. City agrees that Developer shall not be required to pay any additional fees (building permit, sewer, water, traffic fees etc.) associated with any attached, affordable secondary/accessory dwelling units.	Not Applicable (at this time)		
a)	Timing. The Affordable Housing Agreement shall establish provisions to implement the affordable housing requirements within this Agreement and shall include, but not be limited to, implementation and monitoring provisions to ensure compliance with municipal law related to affordable housing. The agreement shall include provisions for the reasonable reimbursement of costs to the City for the administration and monitoring of the agreement.	Not Applicable (at this time)		
b)	Inclusionary Housing Ordinance. Notwithstanding any provision of this Agreement, in the event that the City has rescinded its respective previously adopted affordable housing ordinance and not replaced it with another affordable housing or similar ordinance, or such ordinance has been declared illegal, Developer shall not be obligated to comply with the provisions for affordable housing set forth in this Agreement. In the event, prior to or during the development of the Project, the City amends or replaces or eliminates its affordable housing ordinance which would result in a reduction in the number of secondary units Developer is obligated to construct, then the Affordable Housing Agreement shall be modified to provide for an equivalent reduction in the number of secondary units required to be constructed in the Project or elimination of the requirement.	Not Applicable (at this time)		
Section 3.11	Security Improvements. Developer shall install the basic home security wiring in the Project homes (defined herein as wiring for a basic home security system on the first floor windows and doors only). Developer shall offer one year of professional monitoring service to new homeowners. The monitoring service shall be at the election of the new homeowner.	Not Applicable (at this time)		
Section 3.12	Solar Roof System. Developer shall install a solar roof system on one of its model homes for example purposes only (which may consist of a few panels with photovoltaic compatibility or other comparable technologies) and offer solar installation as an option at the homeowner's expense.	Not Applicable (at this time)		

Exhibit - 1 - Tuscany Meadows DA - 2023 Annual Review Summary Table

Section 3.13	C.3 Facilities. Developer shall construct C.3 facilities as provided in the Project Approvals. In accordance with the City's NPDES permit, provision C.3.e.i.and ii., developer shall have the right to construct or participate in the funding of offsite C.3 facilities as approved by the City Engineer and memorialized by separate agreement with the City. If Developer elects to participate in offsite C.3 facilities in lieu of on-site C.3 facilities, Developer will work with the City to provide an appropriate funding mechanism for the continuous maintenance of these facilities in perpetuity.	Not Applicable (at this time)		
Section 3.14	Traffic Conditions. Developer shall install at its sole cost the following traffic improvements in accordance with the provisions set forth below. In the event any improvements listed below are within the City of Antioch or the City of Antioch's control, Developer, at its option, shall not be required to construct such improvements but shall only be required to pay its proportionate share of the costs of such improvements. In such event, Developer shall deposit with the City of Pittsburg the amount that Developer and the City of Pittsburg City Engineer agree in writing is the Developer's appropriate proportionate share of the cost of such improvements. Upon the deposit of such sums with the City of Pittsburg, the restriction on the issuance of building permits, if any, with respect to such improvement shall be eliminated.	Not Applicable (at this time)		
a)	Traffic Control Plan: Developer shall obtain an encroachment permit and submit a traffic control plan for all construction related activities affecting the public right-of-way.	Not Applicable (at this time)		
b)	Summit Way Extension: Subject to prior written approval from the Antioch and Pittsburg City Engineers, Summit Way shall be extended into the subdivision to provide an additional point of pedestrian and vehicular access from James Donlon Boulevard. The extended street shall consist of a 40-foot-wide roadway and sidewalks that are at least six feet wide in accordance with the City of Pittsburg's standards, and comply with all other applicable City standards.	Not Applicable (at this time)		
c)	Buchanan Road Dedication and Widening: Prior to the first occupancy in the Project, Developer shall dedicate Buchanan Road right-of-way along the project frontage to provide 59 feet from centerline to property line or as requested by the City Engineer in writing. This represents half the width of the City's residential arterial standard. There shall be a transition to existing roadway improvements as approved and determined by the City Engineer in writing. Developer shall also provide all frontage improvements and reconstruct Buchanan Road as necessary to City Standards for a Residential Arterial Street as determined by the City Engineer, providing a consistent two percent maximum cross slope, Class II bicycle lane, sidewalk, and repair any pavement failure areas along the south Buchanan Road project frontage, from Highlands Ranch subdivision to the Contra Costa Canal, approximately 2,870 linear feet. The City Engineer, in writing, may allow occupancy if this work is underway.	Not Applicable (at this time)		
d)	Developer shall install a fully actuated and interconnected traffic signal system at the proposed Somersville Road/Sequoia Drive intersection at the time that Sequoia Drive is connected to Somersville Road. This includes left and right turning lanes to and from Sequoia Drive on Somersville Road.	Not Applicable (at this time)		
e)	Traffic Improvements: Developer shall design and construct the following improvements prior to issuance of a building permit for the 551st dwelling unit. These improvements shall be made with prior written approval of the City Engineer.	Not Applicable (at this time)		

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1)	An additional eastbound left turn lane and an additional northbound left turn lane at the Somersville Road/Buchanan Road intersection along with appropriate traffic signal modifications. This improvement shall not be required if deemed infeasible by the City Engineer during the design process. If acquisition of additional right-of-way is required for this improvement, this improvement will be deemed infeasible. In addition, this improvement shall not be required if ECCRFFA or the City have extended James Donlon Boulevard to Kirker Pass Road or if the City of Pittsburg and TRANSPLAN have approved control point metering of traffic on Kirker Pass Road to 1,400 vehicles per hour during the afternoon peak hour in which case Developer shall design, construct, and fund implementation of such metering near City limits during the p.m. peak commute period.	Not Applicable (at this time)		
2)	An additional westbound through lane on Buchanan Road along the approach to and departure from Harbor Street. This improvement shall not be required if deemed infeasible by the City Engineer in writing during the design process. If acquisition of additional right-of-way is required for this improvement, this improvement will be deemed infeasible. In addition, this improvement shall not be required if ECCRFFA or the City has extended James Donlon Boulevard to Kirker Pass Road.	Not Applicable (at this time)		
3)	An additional westbound through lane on Buchanan Road along the approach to and departure from Loveridge Road. This improvement shall not be required if deemed infeasible by the City Engineer in writing during the design process. If acquisition of additional right-of-way is required for this improvement, this improvement will be deemed infeasible. In addition, this improvement shall not be required if ECCRFFA or the City has extended James Donlon Boulevard to Kirker Pass Road.	Not Applicable (at this time)		
4)	An additional eastbound through lane on Buchanan Road along the approach to and departure from Ventura Drive. This improvement shall not be required if deemed infeasible by the City Engineer in writing during the design process. If acquisition of additional right-of-way is required for this improvement, this improvement will be deemed infeasible. In addition, this improvement shall not be required if ECCRFFA or the City has extended James Donlon Boulevard to Kirker Pass Road or if the City of Pittsburg and TRANSPLAN have approved control point metering of traffic on Kirker Pass Road to 1,400 vehicles per hour during the afternoon peak hour in which case Developer shall design, construct, and fund implementation of such metering near City limits during the p.m. peak commute period.	Not Applicable (at this time)		
5)	An additional eastbound through lane on Buchanan Road along the approach to and departure from Tuscany Meadows Drive. This improvement shall not be required if ECCRFFA or the City has extended James Donlon Boulevard to Kirker Pass Road or if the City of Pittsburg and TRANSPLAN have approved control point metering of traffic on Kirker Pass Road to 1,400 vehicles per hour during the afternoon peak hour in which case Developer shall design, construct, and fund implementation of such metering near City limits during the p.m. peak commute period.	Not Applicable (at this time)		
6)	An additional eastbound through lane on Buchanan Road along the approach to and departure from the Entrance to Parcel A prior to occupancy of this Project's multifamily residential units. This improvement shall not be required if ECCRFFA or the City has extended James Donlon Boulevard to Kirker Pass Road or if the City of Pittsburg and TRANSPLAN have approved control point metering of traffic on Kirker Pass Road to 1,400 vehicles per hour during the afternoon peak hour in which case Developer shall design, construct, and fund implementation of such metering near City limits during the p.m. peak commute period.	Not Applicable (at this time)		

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7)	Left and right turning lanes to and from Sequoia Drive on Somersville Road.	Not Applicable (at this time)		
f)	Other Traffic Improvements: Developer shall design and construct the following improvements prior to the issuance of the first building permit, with prior written approval of the City Engineer:	Not Applicable (at this time)		
1)	A fully actuated and interconnected traffic signal system at the proposed Buchanan Road/Tuscany Meadows Drive intersection.	Not Applicable (at this time)		
2)	Westbound left-turn/acceleration lanes and eastbound right-turn/acceleration lanes at the proposed Buchanan Road/Tuscany Meadows Drive intersection.	Not Applicable (at this time)		
3)	Bus turnouts, bus shelters, and bicycle racks on both sides of Buchanan Road adjacent to Tuscany Meadows Drive. Improvements to the north side of Buchanan Road that are deemed infeasible by the City Engineer in writing shall not be required. If additional right-of-way is required for these improvements, the construction of these improvements will be deemed infeasible.	Not Applicable (at this time)		
4)	Provide Class II bicycle lane and sidewalk along north side of Buchanan Road. The sidewalk improvement shall not be required if deemed infeasible by the City Engineer in writing during the design process.	Not Applicable (at this time)		
5)	A direct multi-use pathway between the project and the Delta de Anza Regional Trail for use by pedestrians and bicyclists. The required timing of these improvements may be adjusted by the City Engineer to accommodate acquisition of necessary access rights.	Not Applicable (at this time)		
6)	Left and right turning lanes to and from Entrance to Parcel A on Buchanan Road prior to occupancy of this Project's multifamily residential units.	Not Applicable (at this time)		
g)	When Tuscany Meadows Drive is connected to James Donlon Boulevard, Developer shall redesign and reconstruct the intersection of Tuscany Meadows Drive/James Donlon Boulevard to eliminate the westbound free-right turn, including removal of a raised island to the written satisfaction of the City Engineer.	Not Applicable (at this time)		
h)	When Tuscany Meadows Drive is connected to James Donlon Boulevard, a physical barrier may be installed, as determined by the City Engineer in writing, to prohibit public vehicle access from James Donlon Boulevard and allowing emergency vehicle access.	Not Applicable (at this time)		
i)	Developer shall design and construct a fully actuated and interconnected traffic signal system at the Buchanan Road/Entrance to Parcel A intersection prior to occupancy of this Project's multifamily residential units.	Not Applicable (at this time)		
Article IV - Obligations of the City				
Section 4.01	Obligations of City Generally. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.	Compliant		
Section 4.02	Processing of Annexation and Central Valley Project Inclusion. City shall promptly, in cooperation with Developer, process all documents necessary to achieve annexation of the Property to the City, CCWD, and Delta Diablo and inclusion into the Central Valley Project area.	Compliant		
Section 4.03	Availability of Public Services.			
a)	General. To the extent permitted by law and consistent with its authority, City shall reserve such capacity for water services as may be necessary to serve the Project. This reservation of water infrastructure capacity shall be assured for the Term to the extent consistent with applicable law.	Not Applicable (at this time)		

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b)	Construction Water. City shall make construction water available to the Project by allowing the Project access to the City’s water supply infrastructure, at a location reasonably determined by the City, at Developer’s cost and on those terms and conditions and charges customarily applied by City to similar projects consistent with City standards. Developer shall provide backflow prevention for all points of connection to the City’s potable water supply system and the volume of water consumed shall be tracked with the use of a City-issued hydrant meter.City shall also permit Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer’s use in any and all Project grading and construction operations, as long as such water is unrelated to potable use.	Not Applicable (at this time)		
Section 4.04	Developer’s Right to Rebuild. City agrees that Developer, in Developer sole’s discretion, may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, acts of God, acts of terrorism, or damage to work in progress by reason of fire, floods or other casualties. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and this Agreement.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 4.04.	
Section 4.05	Reimbursement of Infrastructure Costs.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 4.05.	
a)	Reimbursement. Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project’s fair share obligation for such infrastructure, City shall reimburse Developer for the City’s portion of such costs (including any management fees provided for in this Agreement), subject to City’s prior verification through inspection of the construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City. This reimbursement shall be paid within sixty (60) days after City’s final acceptance or at such other time as mutually agreed upon in writing by the parties. Developer shall be entitled to a management fee of five percent (5%) for City’s share of approved infrastructure costs, including but not limited to design and special inspection costs. The management obligations of Developer hereunder shall include contracting and managing the construction of the infrastructure, retaining copies of records, photographs and “as built” for the improvement(s) as well as attending meetings and providing necessary reports as reasonably requested by City.	Not Applicable (at this time)		

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b)	City's Authorization of Reimbursement. Notwithstanding any other provision of this Section or of this Agreement or VTM provisions, City shall not be responsible to reimburse or credit Developer for any costs, including as referenced in Section 4.05(a) herein, unless prior to Developer incurring any costs for which Developer will request reimbursement from City, Developer shall first provide written documentation as to the work to be performed, the estimated costs thereof, including a not-to-exceed cap, and such other details as reasonably requested by the City Manager and the City Manager approves the proposed costs and related work. If the City Manager fails to respond with thirty (30) days of its receipt of such estimated costs, Developer shall provide a second written notice to the City Manager and to the City Engineer, if neither responds with thirty (30) days of the City's receipt of the second request, the request shall be deemed approved. The City Manager shall have the discretion to require Developer to obtain competitive bids on any work for which Developer may request reimbursement or credit from the City where the total cost (not just the City's share) of that work is One Hundred Thousand Dollars (\$100,000) or more. City shall also have the opportunity to inspect any and all infrastructure during its construction, as well as to review any work product for which Developer requests reimbursement or credits. If mutually agreed by the parties in writing, any reimbursement due Developer pursuant to this Agreement may be satisfied by City in the form of credits, which can actually be used by Developer to offset Developer's payment of any Applicable Fees. In the event there are not enough credits to fully satisfy the reimbursement due Developer and subject to the terms of the mutual agreement between the parties referenced in the prior sentence, City shall reimburse Developer within thirty (30) days of invoicing.	Not Applicable (at this time)		
Section 4.06	James Donlon Extension. Developer shall be entitled to build out the Project prior to construction of the James Donlon Extension, to the extent consistent with CEQA. Developer shall not be required to provide a connection to the James Donlon Extension until the James Donlon Extension is completed and the portion of the Project contiguous to the connection is constructed.	Compliant		
Section 4.07	Parkland Dedication In Lieu Fee. Developer and City agree that the park in-lieu fee valuation is currently Ten Dollars and Twenty Seven Cents (\$10.27) per square foot (unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2019 reflecting 2018 increases. The timing of the payment of the park in-lieu fee shall be satisfied through compliance with the Municipal Code or a separate agreement between Developer and the City.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
Section 4.08	The Project will provide for its fair share of the cost of the water storage, pump station, and transmission pipeline capacity required to serve the homes in the Project in accordance with the most current City Water Master Plan. The Parties shall enter into a separate agreement memorializing such mutual obligation and which agreement shall take into account the following facts, to the extent of their relevance: (i) that a portion of the Property is included in the City's Assessment District No. 1974-1; (ii) the October 2, 1997 letter from Albert D. Seeno Construction Company; (iii) subsequent City Council action January 5, 1998 (Resolution 98-8551).	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
Section 4.09	Undergrounding of Electrical Lines. The developer shall underground all overhead utilities in the subdivision in accordance with Pittsburg Municipal Code 12.36.120 and 12.36.130. City shall cooperate with and assist Developer in applying for Rule 20A funds to be used towards the cost of undergrounding the electrical lines of Buchanan Road in front of the Project Site.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	

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Article V - Cooperation - Implementation				
Section 5.01	Processing Application for Subsequent Approvals. The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions:			
a)	Standard of Review. By adopting the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not inconsistent with the Project Approvals as set forth above, and meet the intent and comply with any City adopted Designed Guidelines, as applicable. To the extent permitted by law, City shall not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that development under this Agreement shall comply with provisions reflected in Uniform Codes (whether building, fire, plumbing, or other applicable uniform codes) which may adopted subsequent to the Effective Date of this Agreement.	Compliant		
b)	Basis for Denial. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 4.05.	
Section 5.02	Timely Submittals By Developer. Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (a) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (b) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for engineering or building permits for the project.	

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Section 5.03	Timely Processing By City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, (a) providing at Developer's expense and subject to Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (b) if legally required, providing notice and holding public hearings; and (c) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section 5.03, Developer's reimbursement to City for such services shall be made in amount equal to City's actual costs of providing such services, in accordance with standard City practice.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for engineering or building permits for the project.	
Section 5.04	Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of Developer, use its best efforts to ensure the timely availability of such permits and approvals. City shall cooperate with Developer to obtain any and all approvals from Contra Costa County related to the construction or operation of the Drainage Improvements. City shall also cooperate with Developer, CCWD and the Bureau of Reclamation (the "Bureau") in all matters related to CCWD's application to the Bureau to expand the place of use of Central Valley Project water to include the Project Site.	See Comments/Action Items	The City has cooperated with the Developer in finalizing the Planning Survey Report (PSR) necessary for Habitat Conservation Plan (HCP) compliance. Developer submitted the final PSR to the Bureau as part of its application for CVP inclusion.	
Section 5.05	Lighting and Landscaping District, Park Maintenance.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
a)	Developer agrees that the Project Site will be annexed into the City's existing Lighting and Landscaping District, as established pursuant to City Resolution No. 88-7324 ("LLD"). as well as City's Community Facilities District 2007-1 for park maintenance ("CFD").	Not Applicable (at this time)		
b)	Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of the parks.	Not Applicable (at this time)		

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Section 5.06	Public Safety Services CFD. Developer agrees to take all steps necessary to include the Project Site into the City's existing police services Community Facilities District 2005-1, as adopted pursuant to Resolution No. 05-10342 (the "Public Safety Services") at no cost to the City, in order to provide for police and other emergency services to the Project Site. This process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the Police Services District no earlier than the issuance of a building permit for such lot.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
Section 5.07	Fire Services CFD. Developer agrees to annex the Project Site into the City's existing Community Facilities District 2017-1 (Fire Facilities and Fire Safety and Emergency Services) as adopted pursuant to Resolution 17-13311, at no cost to the City, to provide fire protection and emergency services for the Project Site. This process shall be completed to the satisfaction of the City Manager, prior to the recordation of the first final map for the Project. Each legal residential lot located on the Project Site will be required to pay the levy for this district no earlier than the issuance of a certificate of occupancy for such lot (such levy shall not go into effect for any certificate of occupancy issued for model homes in the Project until such model home is transferred to a third party homebuyer).	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
Section 5.08	General Plan Maintenance Fee. Developer agrees to pay a development related fee to help fund the maintenance of the Pittsburg General Plan. The General Plan Maintenance Fee will be One Hundred Twenty-five Dollars (\$125) per building permit.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
Section 5.09	Assessment Districts or Other Funding Mechanisms.			
a)	City understands that City's long term assurances to Developer concerning fees, taxes and assessments related to the Project are a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay the fees, taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or other Funding Mechanisms, as defined in Section 3.09 of this Agreement, covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district, Funding Mechanism, or any and all increases thereto, or to request or pursue assessment credits or reductions, unless otherwise provided for herein or unless such assessment, Funding Mechanism or related increases are in place and legally effective as of the date of this Agreement's Effective Date.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for design review or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	

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b)	At the request of Developer, City shall cooperate in the formation of, or annexation to, those assessment districts, geologic hazard abatement district, landscaping and lighting districts, community facilities districts, tax-exempt financing mechanisms, or other Funding Mechanisms that Developer and City determine are needed to fund infrastructure improvements and to ensure the orderly development of the Project, at no cost to the City. City shall diligently and expeditiously process applications by Developer necessary to establish such Funding Mechanisms as long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City, and which will result in no commitment of City funds. City shall diligently seek to sell any bonds to be issued and secured by such assessments upon the best terms reasonably available in the marketplace. Any and all costs associated with this Section shall be borne and/or advanced by Developer.	Not Applicable (at this time)		
Section 5.10	Warranty Bonds. Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property or open space dedications) pursuant to this Agreement shall be accompanied by a one (1) year warranty bond in a form and in an amount, and with a surety acceptable to City or otherwise as determined in the applicable Subdivision Improvement Agreement.	Not Applicable (at this time)		
Article VI - Standards, Laws and Proceedures Governing the Project				
Section 6.01	Vested Right to Develop. Developer shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.	Compliant		
Section 6.02	Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.	Compliant		
Section 6.03	Applicable Law. "Applicable Law" shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approvals, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying any new rules, regulations, official policies, standards, and specifications that do not conflict with those rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.	Compliant		

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Section 6.04	Uniform Codes. Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City's then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.	Compliant		
Section 6.05	Moratorium And Conflicting Enactments. To the extent consistent with State Law, if any ordinance, resolution or other measure is enacted, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.	Compliant		
Section 6.06	Environmental Mitigation. The parties understand that the EIR for the Project is a project level CEQA document intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to the EIR, City agrees to use the EIR in connection with the processing of any Subsequent Approval to the extent allowed by law. City agrees not to impose on Developer any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the Mitigation Monitoring Program described in the FEIR, specifically required by Applicable Law, or as properly required through the design or architecture review process as long as such mitigation measures or other conditions are imposed in a manner consistent with applicable design review guidelines.	Compliant		
Section 6.07	Life of Subdivision Maps, Development Approvals, and Permits. To the extent consistent with Applicable Law, the term of any subdivision map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the duration of this Agreement, including any extensions. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable court order or other legal requirement prevents the processing of any Subsequent Approval or prevents any Project development activities.	Compliant		

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Section 6.08	State and Federal Law. As provided in California Government Code § 65869.5, if any state or federal laws or regulations, enacted after this Agreement's Effective Date prevent or preclude compliance with one or more provisions of this Agreement ("Changes in the Law"), such provision of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.	Compliant		
Section 6.09	Timing of Project Construction and Completion.			
a)	Project Phasing. The Project is expected to be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition and other similar factors.	Compliant		
b)	The parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time, and Developer shall determine which part of the Project Site to develop first, and at Developer's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Developer's rights under this Section 6.09(b) shall be subject to the requirement that adequate infrastructure to serve each phase of the Project is constructed concurrently with such phase. The City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable Law.	Compliant		
c)	Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.	Compliant		

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Section 6.10	Exempting Fees, Mitigation Measures and Similar Requirements Imposed by Outside Agencies. Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section 6.10 shall not prohibit the City from imposing on Developer any fee, mitigation measure or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State or Federal obligations and implemented by the City in cooperation with such local, regional, state or federal agency, provided such fee, mitigation measure or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City as, for example, stormwater-related C.3 requirements and increases thereto.	Compliant		
Section 6.11	City's Joint-Inspection Jurisdiction. Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Compliant		
Article VII - Amendment				
Section 7.01	Amendment to Project Approvals, Subsequent Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 7.01.	
a)	Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes and State or Federal law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire Project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an "Administrative Project Amendment" and the City Manager or his/her designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.	Not Applicable (at this time)		
b)	Non-Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.	Not Applicable (at this time)		

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Section 7.02	Amendment of This Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 7.02.	
a)	Administrative Agreement Amendments. The City Manager, or his/her designee, may, except to the extent otherwise required by law, enter into certain amendments of this Agreement on behalf of the City as long as any such amendment does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Developer (“Administrative Agreement Amendment”), and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. For purposes of this Section 7.02(a), the term “substantially affect” shall be evaluated in the context of the entire Project.	Not Applicable (at this time)		
b)	Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, whether done administratively or not, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by both parties.	Not Applicable (at this time)		
c)	Amendment Limitations. In consideration of the scope of the benefits to City set forth in this Agreement, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to the impacts on City directly attributable to such amendment.	Not Applicable (at this time)		
Article VIII - Assignment, Transfer and Notice				
Section 8.01	Assignment of Interests, Rights and Obligations. Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Article VIII.	
Section 8.02	Transfer Agreements.	Not Applicable (at this time)		
a)	In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a “Non-Assuming Transferee” (as defined in Section 8.03), Developer and the transferee shall enter into a written agreement (a “Transfer Agreement”) regarding the respective interests, rights and obligations of Developer and the transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement may (i) release Developer from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations, (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment.	Not Applicable (at this time)		

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b)	Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City's prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within thirty (30) days of a written request by Developer for City's consent shall be deemed City's approval of the Transfer Agreement in question. City may refuse to give its consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable determination be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent to a proposed transferee pursuant to this Section 8.02(b) if such transferee has a net worth of at least Ten Million Dollars (\$10,000,000) documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa County, Developer shall automatically be released from those obligations assumed by the transferee therein.	Not Applicable (at this time)		
c)	Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.	Not Applicable (at this time)		
Section 8.03	Non-Assuming Transferees. Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than ten (10) lots to a single retail builder or (iii) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school or other nonresidential uses. The transferee in such a transaction and its successors ("Non-Assuming Transferees") shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this Section 8.03 shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.	Not Applicable (at this time)		

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Section 8.04	Notice of Compliance Generally. Subject to City's finding that the facts contemplated by clauses (i) through (iii) herein are true and accurate, within thirty (30) days following any written request which Developer may make from time to time, City shall execute and deliver to Developer (or to any party requested by Developer) a written "Notice of Compliance," in recordable form, duly executed and acknowledged by City, that certifies that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default, and (iii) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.	Not Applicable (at this time)		
Article IX - Cooperation in the Event of Legal Challenge				
Section 9.01	Cooperation.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Article IX.	
a)	Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.	Not Applicable (at this time)		
b)	Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.	Not Applicable (at this time)		

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c)	The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.	Not Applicable (at this time)		
Section 9.02	Cure; Reapproval.	Not Applicable (at this time)		
a)	If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or any portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a “Judgment”) in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter “Deficiencies”), the parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise:	Not Applicable (at this time)		
i)	If any Judgment requires reconsideration or consideration by City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement and the Judgment. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgment necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof.	Not Applicable (at this time)		
ii)	Acting in a manner consistent with the intent of this Agreement or a Judgment includes, but is not limited to, recognizing that the parties intend that Developer may develop a nine hundred seventeen (917) single-family residential unit project, and adopting such ordinances, resolutions, and other enactments, including, but not limited to, a general plan amendment, rezoning, vesting subdivision map approvals, development plan approvals, PD Plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, final development plans, development agreements, permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgment.	Not Applicable (at this time)		
b)	The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.	Not Applicable (at this time)		
Article X - Default, Remedies, Termination				

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Section 10.01	Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (the “Complaining Party”) (unless such period is extended by mutual written consent), shall constitute a default under this Agreement. The Complaining Party’s notice (“Default Notice”) shall specify the nature of the alleged failure and, may specify the manner in which the failure satisfactorily may be cured By the other party (the “Defaulting Party”). Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable date following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than thirty (30) days after the Defaulting Party’s receipt of the Default Notice), the Defaulting Party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party shall take no further action.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 10.01.	
Section 10.02	Termination. If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter; provided, however, that if Developer files an action to challenge City’s termination of this Agreement within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City’s termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 10.02.	
Section 10.03	Periodic Review	See Comments/Action Items	The City has conducted several Annual Reviews of the Development Agreement, and As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, both parties were compliant with the DA.	

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a)	Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement. This review (the "Periodic Review") shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code § 65865.1. Developer also agrees to pay City annually the greater of Five Thousand Dollars (\$5,000) or the actual cost of Periodic Review Fee (not to exceed Ten Thousand Dollars (\$10,000)). The Five Thousand Dollars (\$5,000) shall be increased annually thereafter by the CPI for the San Francisco-Oakland Area, with the first increase implemented in January 2017 reflecting 2016 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted.	Compliant		
b)	Notice. At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Article XII of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the City Manager.	See Comments/Action Items	Notice of the Annual Review was given to the Developer on January 18, 2024.	
c)	Good Faith Compliance. During the Periodic Review, the City Manager shall review Developer's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that Developer has not complied with such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code §§ 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by Developer and City.	Compliant		
d)	Failure to Properly Conduct Periodic Review. If, after thirty (30) days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.	Compliant		
e)	Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.	See Comments/Action Items	Written Notice of Compliance will be sent to the Developer upon conclusion of the Annual Review.	
Section 10.04	Default by City or Developer. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 10.04.	

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Section 10.05	Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are t due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon in writing.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 10.05.	
Section 10.06	Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 10.06.	
Section 10.07	California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Compliant		

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Section 10.08	Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provisions of this Section 10.08 may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. Nothing in this Section 10.08 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 10.08.	
Section 10.09	Attorneys' Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.	Not Applicable		
Article XI - No Agency, Joint Venture or Partnership				

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	It is specifically understood and agreed to by and between the parties hereto that unless otherwise expressly provided herein: (i) the subject development is a private development; (ii) City have no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer. City agrees that Developer's obligations under this Agreement related to the construction of Project water, sewer and drainage infrastructure improvements, the grading and construction of traffic improvements, and the grading and construction of any other public improvements (collectively, the "Public Improvements") are all public works of improvement City is requiring as a condition of regulatory approval of the Project and that the Project is an otherwise private development. City further agrees that it will contribute no more money, or the equivalent of money, to the overall Project than is required to construct the Public Improvements and that City maintain no proprietary interest in the overall Project.	Compliant		
Article XII - Miscellaneous				
Section 12.01	Section 12.01 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.	Not Applicable		
Section 12.02	Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code § 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.	Compliant		
Section 12.03	Findings. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.	Not Applicable		
Section 12.04	Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.	Compliant		

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Section 12.05	Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Compliant		
Section 12.06	Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.	Compliant		
Section 12.07	Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.	Not Applicable		
Section 12.08	Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.	Not Applicable		
Section 12.09	Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by fax (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by FedEx or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties.	Compliant		

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Section 12.10	Entire Agreement, Counterparts And Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of thirty-two (32) pages and three (3) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of any provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes: Exhibit A - Legal Description; Exhibit A-1 - Project Site Diagram; Exhibit B - Applicable Fees	Not Applicable		
Section 12.11	Recordation Of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.	See Comments/Action Items	The DA was recorded at the Contra Costa County Clerk-Recorder on December 26, 2018 (DOC 2018-0205803-00)	

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Trans Bay Cable)
Development Agreement Between The)
City of Pittsburg and Trans Bay Cable)
LLC and Determination as to)
With Development Agreement)

RESOLUTION NO. 24-

WHEREAS, a Development Agreement between the City of Pittsburg and Trans Bay Cable, LLC, was executed on November 27, 2006, for the Trans Bay Cable Project; and

WHEREAS, a 1st Amendment to the Development Agreement was executed on August 31, 2007; and

WHEREAS, a 2nd Amendment to the Development Agreement was executed on November 15, 2010; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DA") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Trans Bay Cable Development Agreement was conducted, and on May 1, 2023, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburg finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and staff, as well as the information contained in the "Trans Bay Cable DA – 2023 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Trans Bay Cable Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Trans Bay Cable Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Pittsburgh at a regular meeting on the 15th day of April, 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk

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DA Section	Condition/Requirement	Status	Comments	Action Items
Section 1 - General Acknowledgements				
	The parties acknowledge that: (a) the City has entered into this Agreement pursuant to the Development Agreement Statutes and its police power in order to address public health and safety and general welfare concerns including those relating to the amount, density, intensity and timing of development on the Project Site and the need for public facilities and infrastructure in connection with the Project Site and other property in the area; (b) there is a certain authority under the police power to address public health and safety concerns that cannot be legally relinquished or restricted by this Agreement and that such authority intended to be reserved and hereby is reserved to City hereunder; and (c) nothing herein shall be construed to limit or restrict the exercise by the City of its power of eminent domain.	Not Applicable		
Section 2 - General Provisions				
2.01	Property Description. The legal description of the Project Site is specifically set forth on Exhibit A, attached hereto and made a part hereof.	Not Applicable		
2.02	Location of Project Site. The Project Site is located in the City and consists of a total of approximately 7.72 acres.	Not Applicable		
2.03	Effective Date. This Agreement shall be binding as to TBC upon TBC's execution hereof, with an effective date ("Effective Date") as of the effective date of the ordinance adopting the Agreement.	See Comments/Action Items	Ordinance No. 06-1278 approving the DA was adopted on November 27, 2006. 1st Amendment allowing a reduction in the size of the converter station and use of HVDC Plus Technology was entered into on August 21, 2007. 2nd Amendment extending the term of the DA to November 27, 2036 was entered into on November 15, 2010.	
2.04	Term. The term of this Agreement shall commence upon the Effective Date and shall extend thirty (30) years thereafter, unless the term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual, written consent of the parties.	Not Applicable	This text is from the 2nd Amendment to the DA	
2.05	Expiration of Term. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect.	Not Applicable		
2.06	Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.	Not Applicable		
2.07	Enforceability of Agreement. City and TBC agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, the Existing Rules or any other land use ordinances or building ordinances, resolutions or ordinances or other regulations adopted by the City which changes, alters or amends the Existing Rules applicable to the development of the Project Site at the time of the approval of this Agreement as provided by Government Code Sections 65866 and 65867.5. This Agreement shall not prevent City from denying or conditionally approving any subsequent development project application by a third party not a successor-in-interest hereto on the basis of such existing or new rules, regulations and policies.	Not Applicable		
2.08	Further Assurances. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Not Applicable		

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2.09	Enforcement of Covenants. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California.	Not Applicable		
2.10	Covenants Run With The Land. Except as otherwise specified herein, all of the terms, provisions, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors, and assigns, and all other persons or entities acquiring all or any portion of the Project Site, or any interest therein, whether by operation of law or in any manner whatsoever, and the rights thereof shall inure to the benefit of such parties and their respective heirs, successors and assigns.	Not Applicable		
2.11	Constructive Notice. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Project Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Project Site.	Not Applicable		
Section 3 - Definitions				
	Reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.	Not Applicable		
3.01	Approvals. Any and all permits or approvals of any kind or character required under the terms of this Agreement to develop the Project Site in the manner as described herein.	Not Applicable		
3.02	Building Ordinances. Those building standards, of general application and not imposed solely with respect to the Project Site, in effect from time to time that govern building and construction standards, including, without limitation, the City's building, plumbing, electrical, mechanical, grading, swimming, pool, sign, and fire codes.	Not Applicable		
3.03	CEQA. CEQA means the California Environmental Quality Act, California Public Resources Code section 21000, et seq., and the State CEQA Guidelines, (California Code of Regulations, title 14, section 15000, et seq.), as each is amended from time to time.	Not Applicable		
3.04	City. City of Pittsburg, County of Contra Costa, State of California.	Not Applicable		
3.05	Comprehensive Payment In Lieu of Fees. The comprehensive payment in lieu of fees ("CPIF") means a payment to City or PPC that represents the liquidated value of all application, processing and development impact fees and other monetary exactions on development of any form or description that exist as of August 2, 2004, or could thereafter be adopted or increased, as established by City, PPC, or any City entity, and which further represents payment in lieu of any other compensation of any kind or description to which City, Agency, PPC or any City entity could claim or be entitled to for having facilitated the Project as it exists as of November 15, 2010, and as described in this Agreement. The parties expressly acknowledge that, by virtue of the adoption of this Agreement, City is waiving any constitutional or statutory authority that may now exist or hereafter be established to levy and assess any application, processing or development impact fee as to the Project, or any general or special tax that is not generally applicable to all commercial property situated within the City, an is accepting the CPIF as full compensation and satisfaction thereof. The CPIF does not include and is not intended to replace (a) generally assessed property taxes, (b) generally assessed sales and use taxes, (c) generally assessed franchise fees, (d) lease payments to PPC for the real property located at 590 West Tenth Street, Pittsburg, (e) any fees, assessments, taxes or other levies of any type or nature which the City may validly impose on new applications for Project approvals submitted by TBC after November 15, 2010, or (f) any financial benefit to City, Agency or PPC from the Project received on or before the effective date of the Second Amendment hereto, or received thereafter under the Settlement Agreement.	Not Applicable	This text is from the 2nd Amendment to the DA	
3.06	Development. The improvement of the Project Site for purposes of constructing the structures, improvements and facilities comprising the Project including, without limitation: grading, the construction and installation of infrastructure and public facilities related to the Project whether located within or outside the Project Site; the construction of structures and building; and the installation of landscaping; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof.	Not Applicable		
3.07	Development Agreement Statutes. Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.	Not Applicable		

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3.08	Development Approval(s). Site-specific permits and other entitlements to use of every kind and nature approved or granted by the City in connection with the Development.	Not Applicable		
3.09	Enacting Ordinance. Ordinance No. 06-1278 enacted by the City Council on November 27, 2006, approving this Agreement.	Not Applicable		
3.10	Existing Land Use Ordinances. The Land Use Ordinances in effect as of the Effective Date of this Agreement.	Not Applicable		
3.12	General Plan. The City of Pittsburg General Plan as adopted by the City Council.	Not Applicable		
3.13	Land Use Ordinances. The ordinances, resolutions, codes, rules, regulations and official policies of City, governing the development of the Project Site, including but not limited to, the permitted uses of land, the density and intensity of use of land, exactions, and the timing of development, all as applicable to the development of the Project Site. Specifically, but without limiting the generality of the foregoing, Land Use Ordinances shall include the City's General Plan, the Development Plan, the City's Zoning Code, and the City's Design Review standards. The term Land Use Ordinances does not include Regulations relating to the following: the conduct of business, professions and occupations generally; taxes and assessments; the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests that provide for the use of or entry upon public property; and any exercise of the power of eminent domain.	Not Applicable		
3.14	Manager. City Manager for the City of Pittsburg.	Not Applicable		
3.15	Persons. As used herein, any reference to or use of the word "person" shall mean, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.	Not Applicable		
3.16	Project. The Trans Bay Cable Project ("Project") shall consist of a converter station located in Pittsburg, California, a converter station located in San Francisco, California, and a submerged cable connecting the two converter stations as more particularly described in Exhibit B.	Not Applicable		
3.17	Project Site. That real property described in Exhibit A, attached hereto and incorporated herein.	Not Applicable		
3.18	Regulations. Constitutions, statutes, City ordinances, and codes, City resolutions and official policies of the City.	Not Applicable		
3.19	Certain Other Terms. Certain other terms shall have the meanings set forth for such terms in this Agreement.	Not Applicable		
Section 4 - General Development of the Property				
4.01	Project. The Project is further defined and described in the Project Description, attached hereto as Exhibit B, which specifies several Project requirements, including but not limited to: (i) proposed uses of the Project Site, (ii) height, size and location of buildings to be constructed on the Project Site, (iii) density and intensity of use of the property, and (iv) requirements for reservation or dedication of portions of the Project Site for public purposes. The Parties recognize that any changes or modifications to the Project, as set forth in the Project Description, may trigger legal requirements mandating City review and/or approval relating to, but not limited to, environmental, design, mitigation measures, building standards, or similar factors. Prior to implementing such changes or modifications that trigger such legal requirements, TBC shall timely seek and obtain City review and approval.	Compliant		
4.02	General Development. Any development of the Project on the Project Site shall be conducted in accordance with the terms and conditions of this Agreement, the Project Agreements and the Project Description. TBC's development of the Project Site, including the converter station, shall be subject to City's building standards, Design Review process, and applicable rules and regulations.	Compliant		

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4.03	Permitted Uses. The permitted uses of the Project Site, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes and location of public improvements, and other terms and conditions of development applicable to the Project Site shall include a transformer, a converter station, and related facilities, subject to the following: (a) Final Environmental Impact Report ("FEIR"), and related Mitigation Monitoring Plan, (b) A landscaping buffer between Tenth Street and the actual facility, and (c) Such other uses permitted by this Agreement, insofar as this Agreement so provides or as otherwise set forth in applicable laws, ordinances, rules or regulations.	Compliant		
4.04	Future Approvals. The City hereby agrees that land uses sought by TBC for the Project Site are approved or will be approved pursuant to the terms of this Agreement, provided that TBC satisfactorily complies with all preliminary procedures, actions, payments and criteria applicable as of the effective date of this Agreement and generally required of Developers by the City for processing applications for developments at such time. City agrees to grant and implement the necessary land use, zoning, or site plan approvals and to grant other approvals and permits, including the Ministerial Approvals, that will accomplish or facilitate development of the Project Site for the uses and to the density or intensity of development described and shown in this Agreement pursuant to those rules, regulation policies and conditions in force on the effective date of this Agreement. Future approvals may relate to design review, parcel map(s), and building permits.	Compliant		
4.05	Vested Right to Develop; Applicable Rules, Regulations and Official Policies. Except as otherwise provided in this Agreement, the rules, regulations, official policies, and conditions of approval governing the permitted uses of the Project Site, the density or intensity of use, and the design, improvement, construction, building and occupancy standards and specifications applicable to the Project and the Project Site shall be those in force on the effective date of this Agreement ("Existing Rules"). The City shall have the right to impose reasonable conditions in connection with such subsequent discretionary permit actions which are not deemed Ministerial Approvals, but such conditions and actions shall not prevent development of the Project as contemplated,by this Agreement and the Development Permits. TBC shall have the right to build and implement the Project on the Project Site consistent with the terms of this and other applicable Agreements, rules and regulations.	Compliant		
4.06	Amendment to Applicable Ordinances. In the event the City Zoning Code is amended by the City in a manner which provides more favorable site development standards than those in effect as of the Effective Date, TBC shall have the right to notify City in writing of TBC's desire to be subject to the new standards for the remaining term of this Agreement. If City agrees, by resolution of the City Council or by action of a City official whom the City Council may designate, such new standards shall become applicable to the Project Site.	Not Applicable		
4.07	Application of New Rules, Regulations and Policies. This Agreement shall not prevent City in subsequent actions applicable to the Project Site from applying new rules, regulations and policies which do not conflict with those rules, regulations, and policies applicable to the Project Site and set forth herein; nor shall this Agreement prevent City from denying or conditionally approving any subsequent development application on the basis of such existing or new rules, regulations, and policies.	Not Applicable		
4.08	Changes in State and Federal Rules and Regulations. Nothing in this Agreement shall preclude the application to the development of the Project Site or changes in the City's laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations as provided in Government Code Section 65869.5.	Not Applicable		
Section 5 - Periodic Review				
	City shall conduct a review of this Agreement as set forth in the following subsections. However, the City's failure to timely conduct such review shall not constitute default under this Agreement.			
5.01	Annual Review. City shall review the extent of good faith compliance by TBC with the terms of this Agreement at least once every 12-month period from the Effective Date of this Agreement.	Compliant		
5.02	Procedure. Such annual review shall be conducted in accordance with the City's duly adopted Development Agreement Procedures.	Compliant		
5.03	Notice. City shall notify TBC in writing of the date of review at least thirty (30) days prior thereto.	Compliant	Notice of the Annual Review was given to the Developer on January 18, 2024.	

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5.04	Good-faith Compliance. During each annual review, TBC is required to demonstrate good faith compliance with the terms of this Agreement.	Not Applicable		
5.05	Production of Documents and Other Evidence. TBC agrees to furnish such reasonable evidence and adequate documentation of good faith compliance as the City, in the exercise of its reasonable discretion, may require.	Not Applicable		
5.06	Cost of Annual Review. The costs incurred by City in connection with the annual review shall be borne by TBC, up to a maximum of \$10,000 per review. Upon written request by the City, TBC shall deposit with the City up to \$10,000 per review to cover the City's costs. At the completion of the review, City shall refund any unused deposit to TBC. Failure, if any, by TBC to deposit the monies shall be grounds for declaring TBC to be in default of this Agreement and/or in noncompliance thereof, and for the City to take such action as provided herein.	In Progress	On January 18, 2024, the City sent a request to the developer to pay the cost of the annual review.	
Section 6 - Obligations of TBC				
6.01	General Obligations. In consideration of City entering into this Agreement, TBC has agreed to comply with the applicable provisions of the PDA and Project Description in developing the Project and to perform certain obligations and provide certain contributions set forth therein, which City acknowledges will have an overall benefit to the public and surrounding area.	Compliant		
6.02	Nexus/Reasonable Relationship Challenges. TBC consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies or programs required by the Existing Land Use Ordinances, Existing Rules or this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.	Not Applicable		
6.03	Cooperation By TBC. TBC will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder, and cause TBC's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefore.	Compliant		
6.04	Other Governmental Permits. TBC shall apply in a timely manner for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project Site as may be required for the development of, or provision of services to, the Project.	Compliant		
6.05	Fees and Taxes		This section (6.05) of the DA was deleted as a result of the 2nd Amendment to the DA	
6.06	Mitigation and Monitoring Plan. TBC shall fully comply with the Mitigation and Monitoring Plan, adopted by the City Council on November 6, 2006.	Compliant		
6.07	Continuing Obligations. Notwithstanding any other provision of this Agreement, TBC's obligations under Section 6.05.1- 6.05.3, inclusive, shall constitute a continuing obligation and bind TBC, its successors and/or assigns, but shall not transfer to the City, PPC, or the City's and/or PPC's successors and assigns, upon TBC's transfer of its interest(s) in the Project Site and/or Project Assets to the City and/or TBC. TBC's obligations under Section 6 shall survive this Agreement's termination.	Not Applicable	This section (6.07) of the DA was deleted as a result of the 2nd Amendment to the DA	
Section 7 - Obligations of City				
	In consideration of TBC entering into this Agreement, City has agreed to the following with respect to the development of the Project Site:			

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7.01	Processing. Upon satisfactory completion by TBC of all required preliminary actions to the satisfaction of City, City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by TBC of the Project Site in accordance with the provisions of this Agreement including, but not limited to, the following: (a) the holding of all required public hearings; and (b) the processing and approval of all Ministerial Approvals and related matters as necessary for the completion of the development of the Project. In this regard, TBC will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder as required by the Existing Rules and shall cause TBC's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore as required by the Existing Rules.	Compliant		
7.02	Standard of Review. The rules, regulations and policies that apply to any Ministerial Approvals which must be secured prior to the construction of any portion of the Project shall be the Existing Rules. Any Ministerial Approval, including without limitation a building permit, shall be approved by the City within a reasonable period of time after application is made therefore.	Compliant		
Section 8 - Amendments				
8.01	Major Amendments. A "Major Amendment" shall be any modification that makes a substantive change, modification or deviation in the terms of this Agreement or any Exhibits or Schedules attached hereto including the terms of the Project Description attached hereto as Exhibit B and related maps and attachments, as referenced in Recital F. Approval of any Major Amendment shall require a noticed hearing and must be authorized by formal action of the Planning Commission and the City Council.	Compliant		
8.02	Minor Amendments. A "Minor Amendment" shall be any modification that does not make a substantive change, modification or deviation in the terms of this Agreement or any Exhibits or Schedules attached hereto, including the terms of the Project Description attached hereto as Exhibit B and related maps and attachments, as referenced in Recital F. Minor Amendments shall include, but are not limited to, the size of the proposed converter station. Minor Amendments may be approved by the prior written consent of the Manager.	Compliant		
8.03	Discretion of Manager. The Manager has the sole discretion to determine whether any proposed change, modification, or deviation is a Major Amendment or Minor Amendment for purposes of this Agreement, or is neither and thus not requiring the Manager's or the City Council's review and approval. The Manager's determination as to the status of any Major or Minor Amendment is final. The Manager also may, at his/her discretion, determine that a Minor Amendment shall be reviewed and acted upon by the City Council and not by the Manager.	Compliant		
Section 9 - Transfers and Assignments				
9.01	City's Intent. TBC has demonstrated, and the City finds that TBC possesses, the experience, reputation and financial resources to develop and maintain the Project Site in the manner contemplated by this Agreement. It is because of such qualifications, which assure the development of the Project Site to a high quality standard contemplated by the General Plan that the City is entering into this Agreement. Accordingly, restrictions on the right of TBC to assign or transfer the rights and privileges contained in this Agreement are necessary in order to assure the achievement of the objectives of the City's General Plan and this Agreement.	Not Applicable		
9.02	TBC's Right to Assign or Transfer. TBC may assign or transfer any of its rights or interests under this Agreement subject to the prior written consent of City, which shall not be unreasonably withheld.	Not Applicable		
9.03	Restriction on Assignment Does Not Constitute an Unreasonable Restraint on Alienation. TBC agrees that the restriction on its right to transfer any of its rights or interests under this Agreement is not repugnant or unreasonable in that such a restriction is a material inducement to the City to enter into this Agreement since the restriction reserves for the City the power to prevent the transfer of any of the rights and obligations hereunder to an unreliable third party.	Not Applicable		
9.04	Restriction on Assignment Shall Not Prevent TBC From Conveying the Project Site. The parties agree that the restriction on assignment is limited solely to those certain vested rights created under this Agreement and such restriction shall not affect TBC's right to convey the Project Site itself.	Not Applicable		

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9.05	Request Procedure. City shall administer the provisions of this Section through its City Manager. TBC shall notify the Manager in writing of its request for City's consent to an assignment or transfer under this Section.	Not Applicable		
9.06	Additional Information. Upon receipt of a request for an assignment or transfer under this Section, the City Manager shall have the authority to require the production of additional information relating to the qualifications of the proposed assignee or transferee from TBC. TBC shall promptly furnish any and all information required under this Section as the City considers TBC's request for consent to the proposed assignment or transfer.	Not Applicable		
9.07	Approval of Assignment. The City Manager may, at his or her reasonable discretion, approve of the assignment or transfer in writing, deny the assignment or transfer, or refer the matter to the City Council for approval. In the event the City Manager determines that the assignment or transfer should be acted upon by the City Council, the City Manager shall notify TBC in writing of the need for City Council authorization. The City Council shall thereafter consider the proposed assignment or transfer. The proposed assignment or transfer may be approved or denied by formal action of the City Council.	Not Applicable		
9.08	Notice of Proposed Assignment. TBC must provide City with adequate evidence that the proposed assignee, buyer or transferee is qualified using the standards and conditions described in this Section, and ability to comply with these standards and conditions will be the test of reasonableness.	Not Applicable		
9.09	Conditions and Standards. The conditions and standards referred to above are as follows:			
(a)	Such assignee or transferee possesses the experience, reputation and financial resources to cause the Project Site to be developed and maintained in the manner contemplated by the City's General Plan and this Agreement;	Not Applicable		
(b)	Such assignee or transferee enters into a written assumption agreement, in form and content satisfactory to the City Attorney, expressly assuming and agreeing to be bound by the provisions of this Agreement;	Not Applicable		
(c)	Such assignment or transfer will not impair the ability of City to achieve the objectives of its general Plan and this Agreement;	Not Applicable		
9.10	Financing Exemption. Mortgages, deeds of trust, sales and lease- backs, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Project Site are permitted without the consent of the City, provided the City receives prior notice of such financing (including the name and address of the lender and the person or entities acquiring any such secured interest) and TBC retains over fifty percent of the legal or equitable interest in the Project Site and remains fully responsible hereunder. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.	Not Applicable		
9.11	Notice of Assignment. Upon receiving approval of an assignment, TBC shall provide City with written notice of such assignment and as part of such notice the assignee must execute and deliver to City an assumption agreement in which the name and address of the assignee is set forth and the assignee expressly and unconditionally assumes the obligations of all the provisions set forth in the Agreement.	Not Applicable		
9.12	Unapproved Assignments. If City makes the determination not to consent to the assignment or transfer of the rights and privileges contained in this Agreement, and TBC conveys the Project Site to a third party, in whole or in part, TBC shall remain liable and responsible for all of the duties and obligations of this Agreement. Notwithstanding any other provision of this Agreement, TBC may assign this Agreement to PPC without City's prior consent in connection with PPC's acquisition of the Project Assets.	Not Applicable		
Section 10 - Delays in Performance				
10.01	Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, TBC and City shall be excused for performance of their obligations hereunder during any period of delay caused by acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder.	Not Applicable		

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10.02	Third Party Actions. Any court action or proceeding brought by any third party to challenge this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of all or any portion of the Project, whether or not TBC is a party to or real party in interest in such action or proceeding, shall constitute a Permitted Delay under this Section.	Not Applicable		
10.03	Notice of Permitted Delays. If written notice of such delay is given to either party within (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.	Not Applicable		
Section 11 - Default				
11.01	Events of Default. Subject to any extensions of time by mutual consent in writing, and subject to the provisions of the Section regarding Permitted Delays, the failure or unreasonable delay by either party to perform any material term or provision of this Agreement for a period of thirty (30) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot reasonably be cured within such 30- day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. The nonperformance of a material provision of the Mitigation Monitoring Program shall constitute an event of default under this Agreement; provided, however, that the City shall have given TBC notice of such event and a prospective opportunity to cure, within the cure period described herein. The nonperformance of a provision of the Mitigation Monitoring Program that would not otherwise be considered material, as reasonably determined by the City, may become material if such provision is consistently repeated or ignored after several requests to address such matter from the City or representative thereof.	Not Applicable		
11.02	Notice of Default. Any Notice of Default given hereunder shall specify in detail the nature of the alleged Event of Default and the manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.	Not Applicable		
11.03	Cure Period. During the time periods herein specified for cure of an Event of Default, the party charged therewith shall not be considered to be in default for purposes of termination of this Agreement, institution of legal proceedings with respect thereto, or issuance of any building permit with respect to the Project.	Not Applicable		
11.04	General Default Remedies. After notice and expiration of the 30-day period without cure, the non-defaulting party shall have such rights and remedies against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement pursuant to Government Code Section 65868 or seek mandamus, specific performance, injunctive or declaratory relief.	Not Applicable		
11.05	Remedies Cumulative. Any rights or remedies available to non- defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement shall be distinct, separate and cumulative rights and remedies available to such non- defaulting party and none of such rights or remedies, whether or not exercised by the non-defaulting party, shall be deemed to exclude any other rights or remedies available to the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.	Not Applicable		
11.06	Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.	Not Applicable		
11.07	No Damages Relief Against City. The parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from TBC for any breach thereof. As such, the parties agree that in no event shall TBC be entitled to recover damages against City for breach of this Agreement. However, should a court issue a final judgment or other final determination that the City has adopted a tax or assessment, or increase thereof, in violation of Section 4.08 and TBC has paid such tax or assessment, or increase thereof, TBC shall be entitled a refund of such monies it has paid. Additionally, during the period of time that TBC is a party to this Agreement, should the City voluntarily change the zoning on the Project Site, such that the Project may no longer be built on the Project Site, then the limitation under this section shall not apply to the extent of monies actually received by the City and paid by TBC.	Not Applicable		

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11.08	Effect of TBC Default. No building permit shall be issued or building permit application accepted for any structure on the Project Site after TBC is determined by City to be in default of the terms and conditions of this Agreement, and until such default thereafter is cured by the TBC or is waived by City.	Not Applicable		
11.09	Waiver. All waivers must be in writing to be effective or binding upon the waiving party, and no waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party shall not constitute waiver of such party's right to demand strict compliance by such other party in the future.	Not Applicable		
11.10	Scope of Waiver. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time specified in such express waiver.	Not Applicable		
11.11	Attorneys' Fees. Should legal action be brought by either party for breach of this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court.	Not Applicable		
11.12	Venue. In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of Contra Costa or where appropriate, or in the United States District Court for the Northern District of California, as consistent with applicable law.	Not Applicable		
Section 12 - Termination				
12.1	Effect of Termination. Upon termination of this Agreement, the rights, duties and obligations of the parties hereunder shall, subject to the following provisions, cease as of the date of such termination.	Not Applicable		
12.2	Termination by City. If City terminates this Agreement because of TBC's default, then City shall retain any and all benefits, including money or land received by City hereunder.	Not Applicable		
12.3	Termination by TBC. TBC shall have the right to terminate this Agreement at any time, prior to Commercial Operation, as defined in the PSA. Should TBC terminate this Agreement, prior to Commercial Operation, TBC agrees, at TBC's sole cost, to restore the Project Site to its condition prior to TBC asserting control over the Project Site or in such condition as may otherwise be approved in writing by the Manager. Such restoration shall be consistent with applicable federal, state, and local statutes, rules and regulations and shall also comply with the following: Promptly following the demolition and removal of structures, foundations and paving on the Project Site, and the cleaning, grubbing, and grading thereof. TBC shall create, at its sole expense, a visual record of the then-condition of the Project Site, in coordination with the City, which record shall include comprehensive photographic and videographic documentation ("the Record"). Both parties shall have copies of the Record. If TBC commences construction activities, but terminates the Agreement before the Project achieves Commercial Operation, TBC shall restore at its sole expense the Project Site to a rough graded and clean condition, with all aboveground structures, foundations and paving on the Project Site demolished and removed so that the Project Site is in substantially similar condition to that depicted in the Record, or in such condition as may be mutually agreed to in writing between TBC and the Manager.	Not Applicable		
Section 13 - Relationship of Parties				
13.01	Independent Contractors. The parties agree that the Project is a private development and that neither party is acting as the agent of the other in any respect hereunder.	Not Applicable		
13.02	No Joint Venture or Partnership. City and TBC hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and TBC joint venturers or partners.	Not Applicable		
13.03	No Third Party Beneficiaries. The only parties to this Agreement are TBC and City. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.	Not Applicable		
13.04	Ambiguities or Uncertainties. The parties hereto have mutually negotiated the terms and conditions of this Development Agreement and this has resulted in a product of the joint drafting efforts of both parties. Neither party is solely or independently responsible for the preparation or form of this agreement. Therefore, any ambiguities or uncertainties are not to be construed against or in favor of either party.	Not Applicable		
Section 14 - Applicable Law				
	This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Not Applicable		

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Section 15 - Supersedure of Subsequent Laws of Judicial Action				
	The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new law or decision issued by a court of competent jurisdiction, enacted or made after the effective date which prevents or precludes compliance with one or more provisions of this Agreement. Immediately after enactment of any such new law, or issuance of such decision, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement.	Not Applicable		
Section 16 - Cooperation in the Event of Legal Challenge				
	In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action or proceeding.	Not Applicable		
Section 17 - Hold Harmless Agreement				
	TBC hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from, any and all claims, costs and liability for any damages, personal injury or death, which may arise, directly or indirectly, from TBC's or TBC's contractors', subcontractors', agents or employees' operations under this Agreement, whether such negligent operations be by TBC or by any of TBC's contractors, subcontractors, agents or employees.	Not Applicable		
Section 18 - Indemnification				
A.	TBC agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any action arising out of or stemming from this Agreement. TBC may select its own legal counsel to represent TBC's interests at TBC's sole cost and expense. The parties shall cooperate in defending such action or proceeding. TBC shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorney's fees expended by City in defense of any such action or other proceeding, plus staff and attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees and time referenced herein.	Compliant		
B.	TBC also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages, or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations of TBC, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. TBC may select its own legal counsel to represent TBC's interests at TBC's sole cost and expense.	Compliant		
C.	The parties agree that this Section 18 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 18, which shall survive such invalidation, nullification, or setting aside.	Compliant		
Section 19 - Liability Insurance				

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A.	TBC shall maintain, or cause to be maintained, in force during the construction of the Project, pursuant to this Agreement, public liability and property damage insurance, including personal injury, contractual, and owned and non-owned vehicles and equipment, with such coverage and limits as may be reasonably requested by City from time to time, but in no event for less than the sum of one million dollars per occurrence and two million dollars in the aggregate.	Compliant		
B.	Public liability insurance policy or policies shall name City as an additional insured, and any policy or policies shall contain cross-liability endorsements. An endorsement shall be provided which states the coverage is primary insurance and that no other insurance affected by City will be called upon to contribute to a loss under this coverage.	Compliant		
C.	TBC shall provide the City with a certificate and endorsement, in forms satisfactory to the City, evidencing such insurance coverage or coverages shall be filed with City prior to construction of the Project, and the certificate and endorsement shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days' prior written notice to City.	Compliant		
D.	If such coverage is canceled or reduced, TBC shall, within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at TBC's expense, and TBC shall promptly reimburse City for such expense upon receipt of billing from City.	Compliant		
E.	The insurance required under this Section shall neither supersede nor replace the insurance required under the terms of the PSA and the PM. The insurance policies required under this Section shall be in addition to the insurance requirements of the PSA and the PM; however, insurance obtained by TBC under the PSA or PM that affords the same or greater coverage than described in this Section shall satisfy these requirements.	Compliant		
Section 20 - Notices				
	Any notice or communication required hereunder between City or TBC shall be in writing, and may be given either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:	Not Applicable		
(a)	City of Pittsburg, Marc Grisham, 65 Civic Avenue, Pittsburg, CA 94565			
(b)	With copies to: Meyers Nave, Attn: Ruthann G. Ziegler, 555 Capitol Mall, Suite 1200, Sacramento, CA 95814			
(c)	And: Russ Townsend 440 Fifth Street West, Suite B, Sonoma, CA 95476			
(d)	Notices to TBC shall be addressed to: David J. Parquet, Trans Bay Cable LLC, c/o/ Babcock & Brown, Power Operating Partners LLC, 2 Harrison Street, Sixth Floor, San Francisco, CA 94105, Phone: (415) 512-1515, Fax: (415) 267-1500			
(e)	With a copy to: General Counsel, Trans Bay Cable LLC, c/o Babcock & Brown, Power Operating Partners LLC, 2 Harrison Street, Sixth Floor, San Francisco, CA 94105, Phone: (415) 512-1515, Fax: (415) 267-1500			
Section 21 - Exhibits				
21.01	Designation of Exhibits. The reference to a specified Exhibit in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation.	Not Applicable		
	Exhibit A: Project Site			
	Exhibit B: Project Description			
21.02	Incorporation by Reference. All exhibits are deemed incorporated by reference into this Agreement	Not Applicable		
Section 22 - Severability				

Exhibit -1 - Trans Bay Cable DA - 2023 Annual Review Summary Table

	If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.	Not Applicable		
Section 23 - Entire Agreement				
	This Agreement and the Exhibits attached hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as set forth in the PDA and certain confidentiality agreements or as otherwise specified in this Agreement and the Exhibits hereto, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits hereto.	Not Applicable		
Section 24 - Counterparts				
	This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.	Not Applicable		

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Columbia Solar)
Energy Development Agreement)
Between The City of Pittsburgh and)
Columbia Solar Energy LLC)
and Determination as to)
Compliance With Development)
Agreement)

RESOLUTION NO. 24-

WHEREAS, California Government Code Section 65864 *et seq.* (“Development Agreement Statutes”) authorizes and regulates the execution of development agreements (“DA”) between certain public entities and persons who desire to develop private property within a public entity’s jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City’s jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City’s active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement (“Periodic Review”); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Columbia Solar Development Agreement was conducted, and on May 1, 2023, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburgh finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and staff, as well as the information contained in the "Columbia Solar DA – 2023 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Columbia Solar Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Columbia Solar Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 15th day of April 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit - 1 - Columbia Solar DA Periodic Review 2023 Summary Table

DA Section	Condition/Requirement	Department	Status	Comments
DA Term:				
Start Date	May 20, 2013	Planning	Active	
End Date	May 20, 2033	Planning	Active	
Length of Term	20 years	Planning	Active	
SECTION 4: GENERAL DEVELOPMENT OF THE PROPERTY				
Section 4.01	Project development	Planning	Compliant	CSE has obtained all necessary City approvals for rezoning, design review, and environmental review subject to CEQA.
Section 4.02	Development on the project site	Planning	Compliant	Development has been completed in compliance with the terms and conditions of this Agreement and the Project Description, the City's building standards, Design Review process, and applicable rules and regulations.
Section 4.03(a)	Permitted Uses: Mitigated Negative Declaration	Planning	Compliant	City and developer compliant. Current project consistent with development envisioned in MND.
Section 4.03(b)	Permitted Uses: Design Review Approval by the City	Planning	Compliant	City and developer compliant. Current project consistent with development envisioned in DR approval.
Section 4.03(c)	Permitted Uses: Such other uses permitted by Agreement	Planning	Compliant	City and developer compliant. Current project consistent with development envisioned in DA.
Section 4.04	Approvals	Planning	Compliant	City and developer compliant. Current project consistent with development envisioned in DA.
Section 4.05	Vested right to develop	Planning and Engineering	Compliant	City and developer compliant. Current project consistent with development envisioned in DA.
Section 4.06	Amendment to applicable ordinances	Planning	Compliant to date	No amendments to the zoning code to provide more favorable development standards have been adopted.
Section 4.07	Application of new rules, regulations, and policies	Planning	City complaint to date	No subsequent development applications have been submitted to date.
Section 4.08	Future public financing	City Manager	N/A	
Section 4.09	Changes in Local, Regional, State and Federal Rules and Regulations	Community Development	N/A	
SECTION 5: PERIODIC REVIEW				
Section 5.01	Annual review	Planning	City compliant to date	The Columbia Solar Project was completed in 2015. The City is continuing to review the provisions on a yearly basis.
Section 5.02	Procedure for annual review	Planning	City compliant to date	This annual review has been prepared in accordance with the City's adopted procedures for Development Agreement Review.
Section 5.03	Notice of annual review	Planning	City compliant to date	The City has provided CSE with notice of the Annual Review at least 30 days prior.
Section 5.04	Good-faith compliance	Planning	Compliant to date	CSE has exhibited compliance with all measures of the DA and requests for information during this process.
Section 5.05	Production of documents and other evidence	Planning	Compliant to date	CSE has exhibited compliance with all measures of the DA and requests for information during this process.
Section 5.06	Cost of annual review	Planning	Compliant to date	
SECTION 6: OBLIGATIONS OF CSE				

Exhibit - 1 - Columbia Solar DA Periodic Review 2023 Summary Table

Section 6.01	General obligations	Planning	Compliant to date	CSE has exhibited compliance with all requirements of this Agreement to date
Section 6.02	Nexus/reasonable relationship challenges	Attorney and Planning	Compliant	
Section 6.03	Cooperation by CSE	Planning	Compliant to date	CSE has exhibited compliance with all measures of the DA and requests for information during this process.
Section 6.04	Other governmental permits	Community Development	Compliant	CSE obtained all necessary permits and approvals in order to construct project
Section 6.05.1	Property Taxes			Staff has confirmed with the Contra Costa County Tax Collector's website that all property taxes currently due have been paid (through FY 2023-24).
Section 6.05.2	Sales and use taxes	Planning	Compliant	
Section 6.05.3	HCP/NCCP Fees	Planning	Compliant to date	All HCP/NCCP payments due during the 2023-24 FY have been paid in full.
Section 6.06	Mitigation Measures	Planning	Compliant to date	See below
Section 6.07	Decommissioning	Planning	N/A	Project is still operational and no decommission date has been set
Section 6.08	Continuing obligations	Planning	Compliant	
SECTION 7: OBLIGATIONS OF CITY				
Section 7.01(a)	Holding of all required public hearings	Planning	City compliant	
Section 7.01(b)	Processing of all ministerial matters	Community Development	City compliant	
Section 7.02	Fire main and PG&E line extensions	Engineering	Complaint	City granted an easement extension to provide for the relocation of a PG&E utility pole. Relocation was completed at CSE's expense.
Section 7.03	Approval of ministerial applications	Community Development	Compliant	
SECTION 8: AMENDMENTS				
Section 8.01	Major amendments	City Attorney	Compliant	No amendments have been requested
Section 8.02	Minor amendments	City Attorney	Compliant	No amendments have been requested
Section 8.03	Discretion of manager	City Manager	Compliant	
SECTION 9: TRANSFERS AND ASSIGNMENTS				
Section 9.01	City's intent	City Attorney	Compliant	
Section 9.02	CSE's Right to Assign or Transfer	City Attorney	Compliant	City Manager to approve a Transfer in writing as per DA.
Section 9.03	Restriction on Assignment Does Not Constitute an Unreasonable Restraint on Alienation	City Attorney	Compliant	
Section 9.04	Restriction on Assignment Shall Not Prevent CSE From Conveying the Project Site	City Attorney	Compliant	
Section 9.05	Request procedure	City Attorney	Compliant	
Section 9.06	Additional information	City Attorney	Compliant	
Section 9.07	Approval of assignment	City Attorney	Compliant	
Section 9.08	Notice of proposed assignment	City Attorney	Compliant	
Section 9.09(a)	Conditions and standards: assignee or transferee possesses the experience, reputation and financial resources to cause the Project Site to be developed and maintained in the manner contemplated by the City's General Plan and this Agreement.	City Attorney	Compliant	

Exhibit - 1 - Columbia Solar DA Periodic Review 2023 Summary Table

Section 9.09(b)	Conditions and standards: assignee or transferee enters into a written assumption agreement, in form and content satisfactory to the City Attorney, expressly assuming and agreeing to be bound by the provisions of this Agreement.	City Attorney	Compliant	
Section 9.09(c)	Conditions and standards: assignment or transfer will not impair the ability of City to achieve the objectives of its general Plan and this Agreement.	City Attorney	Compliant	
Section 9.10	Financing exemption	City Attorney	Compliant	
Section 9.11	Notice of assignment	City Attorney	Compliant	
Section 9.12	Unapproved assignment	City Attorney	Compliant	
MITIGATION MEASURES				
MM-BIO-1	Permit coverage under the ECCC HCP/NCCP	Planning	Compliant to date	All HCP/NCCP payments due during the 2023-2024 years have been collected.
MM-BIO-2	Preconstruction nesting bird surveys for protected species	Planning	Complaint	
MM-HAZ-1	Compliance with DTSC Covenants	Planning	Compliant	
MM-NOISE-1	Noise generating activities	Planning	Compliant	
MM-NOISE-2	Stationary electrical equipment sound pressure levels	Planning	Compliant	
OUTSTANDING CONDITIONS OF APPROVAL				
COA No. 3	The applicant shall submit a landscaping and irrigation plan to add landscape screening along the southwest corner of the site across from the single family residences to the south and from Central Park to the west.	Planning	Compliant	The applicant has installed climbing vines along the fence lines in a sufficient amount to provide visual screening of the facility for viewers from these locations once the vines are mature.
COA No. 4	All landscaping shall be maintained in good growing condition.	Planning	Compliant to date	CSE has maintained the vines installed and watered regularly to date.
COA No. 6	The site shall be maintained at all times in a neat and clean manner, free of trash and debris.	Planning	Compliant to date	The project site is currently free of all loose trash and debris.
COA No. 30	The applicant shall be supportive of the Delta Trail, as it may extend past, and in close proximity, to the solar facility.	Planning	Compliant to date	No plans to construct portions of the Delta Trail in the vicinity of the project site have been formalized.

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Edgewater)
Apartments Development Agreement)
Between The City of Pittsburgh and)
Sunnyside Pittsburgh, LLC. and)
Determination as to Compliance)
With Development Agreement)

RESOLUTION NO. 24-

WHEREAS, a Development Agreement between the City of Pittsburgh and Sunnyside Pittsburgh, LLC, was executed on April 18, 2018, for the Edgewater Apartments project; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DA") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Edgewater Development Agreement was conducted, and on May 1, 2023, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburgh finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and staff, as well as the information contained in the "Edgewater DA – 2023 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Edgewater Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 15th day of April, 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit -1- Edgewater DA - 2023 Annual Review Summary Table

Section and Title	Terms	Status	Notes
DA Term			
2.01 - Effective Date			
2.01 - End Date			
2.02 - Term			
Obligations of Developer (ARTICLE IV)			
3.01 - Obligations of Developer		In Compliance	
3.02 - Facility Reserve Charges	Developer agrees to pay City's Facility Reserve Charges ("FRC") as set or modified by the City Council from time to time		
3.03 - Water Infastructure	Developer shall comply with the 2015 Water System Master Plan, as amended.	In Compliance	
3.04 - Applicable Fees	City may levy development fees and charges	In Compliance	
3.05 - Applicable Fee Adjustments	Developer shall pay fees and charges consistent with Section 3.04 above, and the applicable adjustments currently provided in such fees, and as modified from time to time by the City, whether such adjustment or modification is an increase or decrease.		
3.06 - City TIF	Developer shall pay the City Local Traffic Mitigation Fee, which fee is necessary to finance unmet City traffic improvement needs in the amount in effect as of the Effective Date		
3.07 - Regional TIF	Developer shall the ECCRFA Regional Transportation Development Impact Mitigation Fee (PMC Chapter 15.103) (the "RTDIM") amount in effect when the Developer obtains a Building Permit.		
3.08 - Fees, Assessments, Taxes	Developer pay listed fees, assessments, taxes	In Compliance	
3.09 - C.3 Facilities	Developer to construct biorention (C.3) facility offsite	In Compliance	
3.10 - Landscaping in C.3	Developer shall provide a Central Irrigation System that is compatible with Rainmaster DX 2 Evolution, or as specified in the City's most current Standard Specifications, with a remote controller included with the package. The installation of this system shall be certified by a John Deere Landscapes United Greentech representative prior to the City's acceptance of the installation.		
3.11 - Security Improvements	Developer install security cameras with Chief of Police. Developer to pay costs within 30 days of receipt of invoice	In Compliance	
3.12 - Bike Share Station	Developer shall pay to the City \$9,000 per year, for five years, beginning with the effective date of this Agreement. The City shall use these funds to develop a bike share station which, at the City's discretion, may be located on the same parcel as the C.3 facilities serving the Project. In the event the City does not maintain a bike share program, the developer shall not be required to provide these funds.	Delete	City Currently does not maintain a Bike Share Facility Contract
3.13 - Sidewalk Relating to Bus Stop	Developer to install 8ft sidewalk west of Loverridge; Curb ramp at the eastern side of driveway; two full trash capture devices	In Compliance	Work completed in 2020.
3.14 - Offsite Recreational Amenities	Developer to install improvements to Assessor's Parcel Number 073-190-012: 1) a six-foot wide multiuse trail, at least one-quarter mile in length; 2) two benches along the trail; 3) solar-powered trail lighting; 4) a six-foot wide sidewalk, and all necessary curb ramps, crosswalks, or other required safety and accessibility improvements	In Progress	
3.15 - Disclosure of Sourrounding Industrial Uses	Developer to provide disclosure of industrial uses	In Compliance	
3.16 - Crime Free Multifamily Housing Program	Developer to participate in the Police Crime Free MF Housing Program	In Compliance	
OBLIGATIONS OF CITY (ARTICLE IV)			
4.01 - Obligations of City	The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long-term covenants and obligations of City, as set forth herein.	In Compliance	
4.02 (a) - Availability of Public Services (General)	Capacity for Water Services	In Compliance	

Exhibit -1- Edgewater DA - 2023 Annual Review Summary Table

4.02 (b) - Construction Water	City shall make construction water available to the Project by allowing the Project access to City's existing water supply infrastructure, at a location reasonably determined by the City, at Developer's cost and on those terms and conditions and charges customarily applied by City to similar projects consistent with City standards. Developer shall provide backflow prevention for all points of connection to the City's potable water supply system and the volume of water consumed shall be tracked with the use of a City-issued hydrant meter. City shall also permit Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer's use in any and all Project grading and construction operations, as long as such water is unrelated to potable use.	In Compliance	
4.03 - Developer's Right to Rebuild	City agrees that Developer, in Developer sole's discretion, may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, acts of God, acts of terrorism, or damage to work in progress by reason of fire, floods or other casualties.	Not Applicable	
4.04 - Reimbursement of Infrastructure Costs (a) (b)	Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, , sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project's fair share obligation for such infrastructure, City shall reimburse Developer for the City's portion of such costs (including any management fees provided for in this Agreement), subject to City's prior verification through inspection of the construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City.	Not Applicable	
4.05 - Park Fee Credit	Developer and City agree that the park in-lieu fee valuation is currently Ten Dollars and Twenty-Seven Cents per square foot (\$10.27/sf foot unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2019 reflecting 2018 increases. Developer and City agree that Developer shall receive partial park fee credit for the on-site recreational improvements in the Project.	In Compliance	
COOPERATION - IMPLEMENTATION (ARTICLE V)			
5.01 - Processing Application for Subsequent Approvals	The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions.(a)Standard of Review. By adopting the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not inconsistent with the Project Approvals as set forth above and meet the intent and comply with any City adopted Designed Guidelines, as applicable. To the extent permitted by law, City shall not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that development under this Agreement shall comply with provisions reflected in Uniform Codes (whether building, fire, plumbing, or other applicable uniform codes) which may be adopted subsequent to the Effective Date of this Agreement. (b)Basis for Denial. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.	Compliant	

Exhibit -1- Edgewater DA - 2023 Annual Review Summary Table

5.02- Timely Submittals by Developer	Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (a) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (b) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.	Compliant	
5.03- Timely Processing by City	Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, (a) providing at Developer's expense and subject to Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (b) if legally required, providing notice and holding public hearings; and (c) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section 5.03, Developer's reimbursement to City for such services shall be made in amount equal to City's actual costs of providing such services, in accordance with standard City practice.	Compliant	
5.04-Other Government Permits	At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of Developer, use its best efforts to ensure the timely availability of such permits and approvals.	Compliant	
5.05 - Lighting and Landscaping District, Park Maintenance, C.3 Facilities	Developer understands that the Project Site is included in the City's existing Citywide Landscaping and Lighting Assessment District, as established pursuant to City Resolution No. 88 7324 ("LLD"). Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of the parks.	Compliant	
5.06- Park Maintenance CFD 2007	Developer agrees that the Project Site will be annexed into the City's existing Community Facilities District 2007-1 for Park Maintenance (CFD 2007-1). The rate of the CFD 2007-1 fee is subject to City Council Resolution No. 07-10698. Developer shall complete annexation of the subject property into the CFD 2007-01 prior to the issuance of any building permits.	Compliant	
5.07- Maintenance of Project. Facilities CFD 2016-1	Developer agrees that the Project Site will be annexed into the City's existing Community Facilities District 2016-1 for maintenance of stormwater treatment facilities (CFD 2016-1), such as the bioretention basin as described in Section 3.09. Developer shall complete annexation of the property into the CFD 2016-01 prior to the issuance of any building permits.	Compliant	
5.08 - Public Safety Services CFD 2005-1	Developer agrees that the Project Site will be annexed into the City's existing Community Facilities District 2017-1 for Fire Facilities and Fire Safety and Emergency Services (CFD 2017-1). The rate of the CFD 2017-1 fee is subject to City Council Resolution No. 17-13311. Developer shall complete annexation of the property into the CFD 2017-01 prior to the issuance of any building permits.	Compliant	
5.09 - Fire Facilities/Safety and Emergency Services CFD 2017-1	Developer agrees that the Project Site will be annexed into the City's existing Community Facilities District 2017-1 for Fire Facilities and Fire Safety and Emergency Services (CFD 2017-1). The rate of the CFD 2017-1 fee is subject to City Council Resolution No. 17-13311. Developer shall complete annexation	Compliant	
5.10 - Parkland Dedication In Lieu Fee	Developer shall pay an In-Lieu Parkland Dedication Fee to the Engineering Department prior to the issuance of a building permit for the Project per PMC Section 17.32.020.D.2. The park in-lieu fee amount shall be calculated using the rate in place at the time of issuance of a building permit, which is increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2018 reflecting 2017 increases.	Compliant	

Exhibit -1- Edgewater DA - 2023 Annual Review Summary Table

5.11- Assessment Districts or Other Funding Mechanisms	Developer understands that the Project Site is included in the City’s existing Citywide Landscaping and Lighting Assessment District, as established pursuant to City Resolution No. 88 7324 (“LLD”). Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project’s final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of the parks.	Compliant	
5.12 - Warrany Bonds	Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property or open space dedications) pursuant to this Agreement shall be accompanied by a one (1) year warranty bond in a form and in an amount, and with a surety acceptable to City, or otherwise as determined in the applicable Subdivision Improvement Agreement.	Complaint	
5.13 General Plan Maintenance Fee	Developer agrees to pay a development related fee to help fund the maintenance of the Pittsburg General Plan. The General Plan Maintenance Fee will be One Hundred Twenty-Five Dollars (\$125) per dwelling unit.	Compliant	
Standards, Laws, and Procedures Governing the Project (ARTICLE VI)			
6.01-Vested Right to Develop	Developer shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.	Not applicable	
6.02-Permitted Uses Vested by this Agreement	The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.	Not applicable	
6.03- Applicable Law	“Applicable Law” shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approvals, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying any new rules, regulations, official policies, standards, and specifications that do not conflict with those rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.	Not applicable	
6.04-Uniform Codes	Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City’s then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.	Not applicable	
6.05-Moratorium and Conflicting Enactments	To the extent consistent with State Law, if any ordinance, resolution or other measure is enacted, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.	Not applicable	

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6.07-State and Federal Law	As provided in California Government Code § 65869.5, if any state or federal laws or regulations, enacted after this Agreement’s Effective Date prevent or preclude compliance with one or more provisions of this Agreement (“Changes in the Law”), such provision of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.	Not applicable	
6.08-Timing of Project Construction and Completion	(a)Project Phasing. The Project may be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition and other similar factors. (b)Project Time Schedule. The parties agree that Developer shall be able to develop in accordance with Developer’s own time schedule as such schedule may exist from time to time, and Developer shall determine which part of the Project Site to develop first, and at Developer’s chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties’ agreement, it is the parties’ desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Developer’s rights under this Section 6.08(b) shall be subject to the requirement that adequate infrastructure to serve each phase of the Project is constructed concurrently with such phase. The City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable Law. (c)Developer Agreements. Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement, or similar agreement in accordance with the terms thereof.	Not applicable	
6.09-Exempting Fees, Mitigation Measures,...	Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City’s discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section 6.09 shall not prohibit the City from imposing on Developer any fee, mitigation measure or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State or Federal obligations and implemented by the City in cooperation with such local, regional, state or federal agency, provided such fee, mitigation measure or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City as, for example, stormwater-related C.3 requirements and increases thereto.	Not applicable	
6.10-City's Joint-Inspection Jurisdiction	Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Not applicable	
AMENDMENT (ARTICLE VII)			
7.01- Amendment to Project Approvals, Subsequent Approvals	Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Not applicable	

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7.02- Amendment of this Agreement	To the extent permitted by State and Federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner: (a)Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes and State or Federal law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire Project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts, the amendment shall be determined to be an “Administrative Project Amendment” and the City Manager or his/her designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments. (b)Non-Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.	Not applicable	
ASSIGNMENT, TRANSFER AND NOTICE (ARTICLE VIII)			
8.01-Assignment of Interests, Rights/Obligations	Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.	Not applicable	

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8.02-Transfer Agreements	(a)In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a “Non-Assuming Transferee” (as defined in Section 8.03), Developer and the transferee shall enter into a written agreement (a “Transfer Agreement”) regarding the respective interests, rights and obligations of Developer and the transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement may (i) release Developer from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations, (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment. (b)Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City’s prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within thirty (30) days of a written request by Developer for City’s consent shall be deemed City’s approval of the Transfer Agreement in question. City may refuse to give its consent only if, in light of the proposed transferee’s reputation and financial resources, such transferee would not in City’s reasonable determination be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent to a proposed transferee pursuant to this Section 8.02(b) if such transferee has a net worth of at least Ten Million Dollars (\$10,000,000) documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa County, Developer shall automatically be released from those obligations assumed by the transferee therein. (c)Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer’s obligations under this Agreement shall be attributed to Developer, nor may Developer’s rights hereunder be canceled or diminished in any way by any breach or default by any such person.	Not applicable	
8.03-Non-Assuming Transferees	Except as otherwise required by Developer in Developer’s sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City’s consent shall be required in connection with (a) any single residential parcel conveyed to a purchaser, (b) any property transferred as fewer than ten (10) lots to a single retail builder or (c) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school or other nonresidential uses. The transferee in such a transaction and its successors (“Non-Assuming Transferees”) shall be deemed to have no obligations under this Agreement but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this Section 8.03 shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.	Not applicable	
8.04-Notice of Compliance Generally	Subject to City’s finding that the facts contemplated by clauses (a) through (c) herein are true and accurate, within thirty (30) days following any written request which Developer may make from time to time, City shall execute and deliver to Developer (or to any party requested by Developer) a written “Notice of Compliance,” in recordable form, duly executed and acknowledged by City, that certifies that (a) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (b) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default, and (c) any other information reasonably requested by Developer. City’s failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer’s sole discretion, to record the Notice of Compliance.	Not applicable	
Cooperation in the Event of Legal Challenge			

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9.01-Cooperation	(a)Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein. (b)Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. (c)The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.	Not applicable	
9.02-Cure,Reapproval	(a)If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or any portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a "Judgment") in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter "Deficiencies"), the parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise: (i)If any Judgment requires reconsideration or consideration by City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement and the Judgment. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgment necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof. (ii)Acting in a manner consistent with the intent of this Agreement or a Judgment includes, but is not limited to, recognizing that the parties intend that Developer may develop a sixty-two (62) unit multi-family residential project, and adopting such ordinances, resolutions, and other enactments, including but not limited to a general plan amendment, rezoning, vesting subdivision map approvals, development plan approvals, PD Plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, final development plans, development agreements, permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgment. (b)The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.	Not applicable	
DEFAULT; REMEDIES;TERMINATION			

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10.01-Defaults	Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (the “Complaining Party”) (unless such period is extended by mutual written consent), shall constitute a default under this Agreement. The Complaining Party’s notice (“Default Notice”) shall specify the nature of the alleged failure and, may specify the manner in which the failure satisfactorily may be cured by the other party (the “Defaulting Party”). Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable date following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than thirty (30) days after the Defaulting Party’s receipt of the Default Notice), the Defaulting Party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist, and the Complaining Party shall take no further action.	Not applicable	
10.02-Termination	If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter; provided, however, that if Developer files an action to challenge City’s termination of this Agreement within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City’s termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).	Not applicable	

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10.03-Periodic Review	(a)Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement. This review (the “Periodic Review”) shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code § 65865.1. Developer also agrees to pay City annually the greater of Two Thousand Five Hundred Dollars (\$2,500) or the actual cost of Periodic Review Fee (not to exceed Ten Thousand Dollars (\$10,000)) for the first annual review and, for subsequent reviews, the Developer’s obligation to pay annually shall be the greater of Two Thousand Five Hundred Dollars (\$2,500) or the actual cost of Periodic Review Fee (not to exceed Five Thousand Dollars (\$5,000)). The Two Thousand Five Hundred Dollars (\$2,500) shall be increased annually thereafter by the CPI for the San Francisco Oakland Area, with the first increase implemented in January 2019 reflecting 2018 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted. (b)Notice. At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Article XII of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer’s performance hereunder. Developer shall be permitted an opportunity to respond to City’s evaluation of Developer’s performance, either orally at a public hearing or in a written statement, at Developer’s election. Such response shall be made to the City Manager. (c)Good Faith Compliance. During the Periodic Review, the City Manager shall review Developer’s good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that Developer has not complied with such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code §§ 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by Developer and City. (d)Eailure to Properly Conduct Periodic Review. If, after thirty (30) days following Developer’s notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall be conclusively deemed an approval by City of Developer’s compliance with the terms of this Agreement. (e)Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer’s sole discretion, to record such notice of compliance.	Compliant	
10.04-Extension of Time of Performance	In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to Developer’s inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer’s actions or inactions and beyond Developer’s control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon in writing.	Not applicable	
10.05-Legal Action	Either party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.	Not applicable	
10.06-California Law	This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Not applicable	

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10.07-Resolution of Disputes	With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provisions of this Section 10.07 may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. Nothing in this Section 10.07 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.	Not applicable	
10.08-Attorneys' Fees	In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.	Not applicable	
10.09-Default by City of Developer	In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.	Not applicable	
NO AGENCY, JOINT VENTURE, PARTNERSHIP			
MISCELLANEOUS			
12.01-Incorporation of Recitals and Introductory	The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.	Not applicable	
12.02-Enforceability	City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code § 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.	Not applicable	
12.03-Findings	City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.	Not applicable	
12.04-Severability	If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.	Not applicable	

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12-05-Other Necessary Acts	Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Not applicable	
12.06-Construction	Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.	Not applicable	
12.07- Other Miscellaneous Terms	The singular shall include the plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.	Not applicable	
12.08-Covenants Running with the Land	All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.	Not applicable	

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12.09- Notices	Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by fax (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below: If to City, to:City Manager City of Pittsburg Civic Center 65 Civic Avenue Pittsburg, CA 94565-2830 With Copies to:Ruthann G. Ziegler City Attorney Meyers Nave 555 Capitol Mall, Suite 1200 Sacramento, CA 95814 If to Developer, to:Albert D. Seeno, III Sunnyside Pittsburg, LLC 4061 Port Chicago Hwy., Ste. H Concord, CA 94520 With Copies to: Sunnyside Pittsburg, LLC Attn: Legal Department 4021 Port Chicago Hwy. Concord, CA 94520	Not applicable	
12.10 Entire Agreement, Counterparts and Exhibits	This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of twenty-seven (27) pages and four (4) exhibits, which constitute in full the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of any provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes: EXHIBIT A -Legal Description EXHIBIT A-1 -Project Site Diagram EXHIBIT B -Applicable Fees	Not applicable	
12.11 Recordation of Development Agreement	Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.	Not applicable	

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of Montreux)
Subdivision Development Agreement)
Between the City of Pittsburg and)
Altec Homes, Inc. and Determination)
as to Compliance With Development)
Agreement)

RESOLUTION NO. 24-

WHEREAS, a Development Agreement between the City of Pittsburg and Altec Homes, Inc., was executed on December 15, 2015, for the Montreux Property; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DA") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Montreux Development Agreement was conducted, and on May 1, 2023, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburg finds and determines as follows:

Section 1. Findings

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and staff, as well as the information contained in the "Montreux DA – 2023 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Montreux Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Montreux Subdivision Development Agreement in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 15th day of April, 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Exhibit -1 - Montreux DA - 2023 Annual Review Summary Table

DA Section	Condition/Requirement	Status	Comments	Action Items
Article II: Effective Date; Term				
2.01	This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective.	Per the Development Agreement, the effective date is December 16, 2015.		No action.
2.02	Term. The term of this Agreement shall commence upon the Effective Date and continue for a period of 16 years.	Based on the effective date of December 16, 2015, this development agreement would expire in 2031.		No action.
Article III: Obligations of Developer				
3.01	Obligations of Developer Generally. The parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer's agreement to perform and abide by its long term covenants and obligations, as set forth herein. The parties acknowledge that many of Developer's long term obligations set forth in this Agreement are in addition to Developer's agreement to perform all the mitigation measures identified in the Mitigation Monitoring Program. As material consideration for the long term assurances and vested rights provided by this Agreement and as a condition of approval to one or more of the Project Approvals, Developer agrees to each of the following:	Compliant to date.		No action.
3.02	Drainage Improvements. Subject to the terms of this Agreement, as a condition of approval to one or more of the Project Approvals, Developer agrees to construct and offer for dedication to the City those Project storm water drainage improvements to be located within City's boundaries and required to serve the Project Site ("Drainage Improvements"). The City shall accept the offer of dedication of the Drainage Improvements, as long as the Drainage Improvements comply with the City's standards, applicable rules and regulations, and this Agreement. The parties agree that the construction of the Drainage Improvements shall be phased according to a construction schedule determined by Developer, subject to the written approval of the City Manager. City shall not require any improvements to onsite or offsite drainage facilities to address pre-existing deficiencies provided that Developer demonstrates to City's reasonable satisfaction that impact to downstream facilities are not being exacerbated.	Not applicable at this time.	Grading plans submitted. Drainage improvements would be required.	Construct and offer for dedication stormwater drainage improvements in compliance w City standards.
3.03	Facility Reserve Charges. Developer agrees to pay City's Facility Reserve Charges ("FRC") as set or modified by the City Council from time to time.	Not applicable at this time.	FRC's may be impacted based on final outcome of water & sewer. Due when submitting to Building.	Pay FRCs.
3.04	Water Infrastructure. Developer shall comply with the 2015 Water System Master Plan, as amended. Developer shall have the option, subject to the written approval by the City Manager, to provide water infrastructure facilities as specified by the City or to construct the water infrastructure facilities in phases subject to a storage requirement and site analysis study, commissioned by the City, that incorporates the water infrastructure requirements pursuant to the 2015 Water System Master Plan, as amended.	Not applicable at this time.	Not yet submitted.	Provide water infrastructure facilities, or construct them in phases.
3.05	School Facilities Impact Mitigation. Developer shall pay in lieu school impact fees in accordance with Government Code 65995 et seq. Compliance with this section shall satisfy all of Developer's obligations required by City to mitigate school impacts resulting from the Project.	Not applicable at this time.	Due when submitting to Building.	Pay in lieu school impact fees.

Exhibit -1 - Montreux DA - 2023 Annual Review Summary Table

3.06	Applicable Fees. City may levy development fees, and charges during this term of this Agreement relative to the development of the Project Site which are in force and effect as of the Effective Date as more particularly described and according to the payment schedule set force on Exhibit B ("Applicable Fees") and the adjustments and/or modifications referenced in Section 3.07. Unless otherwise provided in this Agreement, no development fees, or charges, or categories thereof, shall be imposed on Project other than those fees, and charges identified as Applicable Fees on Exhibit B, which exhibit shall exclusively govern the Applicable Fee payment schedule. The parties agree that any and all Project development fees, charges or exaction related to schools, fire prevention, water, sewer, stormwater, and storm drainage facilities, which are to be paid by Developer directly or indirectly to third party governmental agencies, are not subject to or within the scope of this Agreement whether such third party charges exist or are subsequently imposed by such third parties, whether directly upon Developer or through City. This provision shall not be construed to benefit any Non-Assuming Transferees, as such term is defined in herein.	Not Applicable at this time.		
3.07	Applicable Fee Adjustments. Developer shall pay fees and charges consistent with Section 3.06, and the applicable adjustments currently provided in such fees and as modified from time to time by the City, whether such adjustment or modification is an increase or a decrease. City retains the right to modify, amend, or adjust the Applicable Fees by more than that authorized by ordinances, resolutions, or policies in place at the time of this Agreement's Effective Date, and Developer retains the right to challenge the imposition of any new fees not referenced in this Agreement or the modification, amendment, or adjustment of all Applicable Fees pursuant to Government Code 66000 et seq., not already authorized by ordinances, resolutions, or policies in place at the time of this Agreement's Effective Date. Should the City Council approve a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option at its sole discretion to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Not Applicable at this time.		
3.08	City Local Traffic Mitigation Fee. Developer shall pay the City Local Traffic Mitigation Fee, which fee is necessary to finance unmet City traffic improvement needs in the amount in effect as of the Effective Date and subject to adjustments in accordance with Resolution 07-10917 with credit for certain improvements constructed by Developer per Section 4.05 below. If the City Council approves a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Not Applicable at this time.	Due when submitting to Building.	Pay local Traffic Mitigation Fee.
3.09	Regional Traffic Fee. Developer shall pay the ECCRFA regional traffic fee should it be imposed by the City in an amount equal to or less than the amount paid by projects in the Cities of Antioch, Brentwood, and Oakley or in accordance with the existing valid MOU dated June 29, 2010 as amended, whichever is less.	Not Applicable at this time.	Due when submitting to Building.	Pay ECCRFA regional traffic fee.
3.10.	Fees, Assessments, and/or Taxes to be Paid by Developer. Developer agrees to pay its fair share of any levies imposed by any assessment district, geologic hazard abatement district, landscaping and lighting district, community facilities district, tax-exempt financing mechanisms or other funding mechanisms related to public safety; traffic; sewer; water; fire; the prevention, mitigation, abatement, or control of geologic hazards; or other infrastructure improvements (including without limitation, design, acquisition, construction and maintenance costs) (collectively, Funding Mechanisms) within the Project Site, provided that such Funding Mechanism is referenced herein and/or was legally created pursuant to applicable law.	Not Applicable at this time.		Pay fair share of levies imposed by assessment districts.

Exhibit -1 - Montreux DA - 2023 Annual Review Summary Table

3.11	Affordable Housing. Developer shall comply with PMC 18.86.080 and VTM Condition of Approval No. 7 by constructing at least 35 rental secondary units within the Project. A covenant shall be recorded limiting the amount of rent that may be charged for these secondary units, consistent with the terms and conditions set forth in the affordable housing agreement. 26 of these units shall be constructed no later than the 263rd building permit for the Project. Prior to the City's issuance of the first certificate of occupancy Developer agrees to enter into an affordable housing agreement with the City (the "Affordable Housing Agreement," attached as Exhibit C) which further memorializes the provisions of this section and is consistent with applicable law, including Pittsburg Municipal Code Chapter 18.50. Developer agrees that the secondary units referenced in this section shall not be built or otherwise allowed on adjoining lots without the prior written approval of the City Manager.	Not applicable at this time.	Plans not yet submitted.	Construct 35 rental secondary units (26 by 263rd building permit). Record covenant limiting rent amount. Enter into Affordable Housing Agreement before Certificate of Occupancy issued.
a	Timing. The Affordable Housing Agreement shall establish provisions to implement the affordable housing requirements within this Agreement and shall include but not be limited to, implementation and monitoring provisions to ensure compliance with municipal law related to affordable housing. The agreement shall include provisions for the reasonable reimbursement of costs to the City for the administration and monitoring of the agreement.	Not applicable at this time.		Implement and monitor provisions to ensure compliance with municipal law related to affordable housing. Include provisions to reimburse City for cost of
b	Inclusionary Housing Ordinance. Notwithstanding any provision of this Agreement, in the event that the City has rescinded its respective previously adopted affordable housing ordinance and not replaced it with another affordable housing or similar ordinance, or such ordinance has been declared illegal, Developer shall not be obligated to comply with the provisions for affordable housing set forth in this Agreement. In the event, prior to or during the development of the Project, the City amends or replaces or eliminates its affordable housing ordinance which would result in a reduction in the number of secondary units required to be constructed in the Project or elimination of the requirement.	Not applicable at this time.	Only applicable if City rescinds previously adopted affordable housing ordinance and not replaced it.	
3.12	Pre-payment for James Donlon Extension. Developer will pre-pay the City regional traffic mitigation fees for all units in the Project if at the time of the issuance of the first building permit for the Property for the first single-family residential production unit (or at any time during the build-out of the Project thereafter), the James Donlon Extension is either (i) under construction; (ii) is funded and scheduled for construction and the construction contract is awarded; or (iii) ECCRFFA has collected the funds necessary for its pro rate share of the James Donlon Extension. If none of the above conditions exist at the time of issuance of the first building permit, Developer will pay such fees on a permit-by-permit basis in the regular course of business. City and Developer agree that the obligations set forth in the March 15, 2006 Memorandum of Understanding ("March 2006 MOU") between City and Developer are met by compliance with this Section.	Not applicable at this time.	Applicable if/when the James Donlon Extension is either (i) under construction; (ii) is funded and scheduled for construction and the construction contract is awarded; or (iii) ECCRFFA has collected the funds necessary for its pro rate share of the James Donlon Extension	Pay the City regional traffic mitigation fees.
3.13	Open Space Mitigation. City and Developer agree that the obligations set forth in the May 3, 2006, Memorandum of Understanding between City and Developer, Albert D. Seeno, III and Albert D Seeno, Jr. with respect to open space mitigation can be met by compliance by Developer with the HCP or through other agreements or approvals by the HCP conservancy and/or Regulatory Agencies.	Compliant to date.		No action.
3.14	Security Improvements			
a	Developer shall pay to the City the actual cost incurred by the City (not to exceed \$75000) towards funding the acquisition and installation of security camera(s) at the intersection of James Donlon Extension and Kirker Pass Road. The security cameras will be installed under the supervision of the City's Police Chief. Developer shall pay such costs within 30 days of receipt of invoice.	Not applicable at this time.		Pay cost of installing security cameras at intersection of James Donlon Extension and Kirker Pass Road.
b	Developer shall install basic home security wiring in the Project homes (defined herein as wiring for basic home security system on the first floor windows and doors only). Developer shall offer one year of professional monitoring service to new homeowners. The monitoring service shall be at the election of the new homeowner.	Not applicable at this time.		Install basic home security wiring on first floor windows and doors. Offer one year of professional monitoring service.
3.15	Solar Roof System. Developer shall install a solar roof system on one of its model homes for example purposes only (which may consist of a few panels with photovoltaic compatibility or other comparable technologies) and offer solar installation as an option at the homeowner's expense.	Not applicable at this time.		Install solar roof system on one model home.

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3.16	C.3 Facilities. Developer shall submit a complete Stormwater Control Plan and Report for the Project. The C.3 treatment facilities shall be adequately sized to treat the stormwater runoff from the associated drainage management areas, and supporting calculations and plans shall be submitted to the Engineering Division for review prior to issuance of a grading permit. In the event it is discovered that the runoff cannot be treated on site, the developer shall treat the remaining portion of runoff or all of the equivalent amount of runoff at an off-site facility adequately sized and designed to meet the treatment and flow control needs. The offsite facility(ties) shall be constructed with the first phase of the project, as approved by the City Engineer.	Not applicable at this time.	Will be a separate phase.	Submit C.3 Plan.
Article IV: Obligations of City				
4.01	Obligations of City Generally. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.	Compliant to date.		No action.
4.02	Processing of Annexation and Central Valley Project Inclusion. City shall promptly, in cooperation with Developer, process all documents necessary to achieve annexation of the Property to the City, CCWD, and Delta Diablo and inclusion into the Central Valley Project area.	Compliant.	LAFCO's Certificate of Completion effective date April 17, 2017.	Annex property to City, CCWD, Delta Diablo, and Central Valley Project Area.
4.03	Availability of Public Services.			
a	General. To the extent permitted by law and consistent with its authority, City shall reserve such capacity for water services as may be necessary to serve the Project. This reservation of water infrastructure capacity shall be assured for the Term to the extent consistent with applicable law.	Not applicable at this time.		City shall reserve capacity for water services for project.
b	Construction Water. City shall make construction water available to the Project by permitting the Project to hook up to existing City water supply infrastructure, at a location reasonably determined by the City, at Developer's cost and on those terms and conditions and charges customarily applied by City to similar projects consistent with City standards. City shall also permit Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer's use in any and all Project grading and construction operations, as long as such water is unrelated to potable use.	Not applicable at this time.		City shall permit water hook ups to existing water supply infrastructure.
4.04	Developer's Right to Rebuild. City agrees that Developer, in Developer sole's discretion, may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, acts of God, acts of terrorism, or damage to work in progress by reason of fire, floods, or other casualties. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and this Agreement.	Not applicable at this time.		Can rebuild within term.
4.05	Reimbursement of Infrastructure Costs.			
a	Reimbursement. Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, the off-site water tank, pump station, sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project's fair share obligation for such infrastructure, City shall reimburse developer for City's portion of such costs, subject to the City's prior verification through inspection and construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City. This reimbursement shall be paid within 60 days after City's final acceptance or at any such other time as mutually agreed upon in writing by the parties. Developer shall be entitled to a management fee of 5% for City's share of approved infrastructure costs, including but not limited to design and special inspection costs. The management obligations of Developer hereunder shall include contracting and managing the construction of the infrastructure, retaining copies of records, photographs and as builts for the improvement(s) as well as attending meetings and providing necessary reports as reasonably requested by City.	Not applicable at this time.		City shall reimburse Developer for City portion of costs.

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b	City Authorization of Reimbursement. Notwithstanding any other provision of this Section or of this Agreement or VTM provisions, City shall not be responsible to reimburse or credit Developer for any costs, including as referenced in Section 4.05a herein, unless prior to Developer incurring any costs for which Developer will request reimbursement from City, Developer shall first provide written documentation as to the work to be performed, the estimated costs thereof, including a not-to-exceed cap, and such other details as reasonably requested by the City Manager and the City Manager approves the proposed costs and related work. If the City Manager fails to respond within 30 days of its receipt of such estimated costs, Developer shall provide written notice to the City Manager and to the City Engineer, if neither responds within 30 days of the City's receipt of the second request, the request shall be deemed approved. the City Manager shall have the discretion to require Developer to obtain competitive bids on any work for which Developer may request reimbursement or credit from the City where the total cost of that work is \$100,000 or more. City shall also have the opportunity to inspect any and all infrastructure during its construction, as well as to review any work product for which Developer requests reimbursement or credits. If mutually agreed by the parties in writing, any reimbursement due Developer pursuant to this Agreement may be satisfied by City in form of credits, which can actually be used by Developer to offset Developer's payment of Applicable Fees. In the event there are not enough credits to fully satisfy the reimbursement due Developer and subject to the terms of the mutual agreement between the parties referenced in the prior sentence, City shall reimburse Developer within 30 days of invoicing.	Not applicable at this time.		Before City reimburses, Developer must provide estimates to City not-to-exceed cap before hand. Must be approved by City Manager.
4.06	James Donlon Extension. Developer shall be entitled to build out the Project prior to construction of the James Donlon Extension, to the extend consistent with CEQA. Developer shall design the entrances to and exits from the Project so that all entrances and exists shall reasonably integrate into the future intersection at the James Donlon Extension and Kirker Pass Rd. The City acknowledges that the construction by Developer of the intersection shall be temporary up to the catch/tie-in point as determined by the City Engineer in writing. The City shall thereafter be responsible for coordinating and removing and replacing such temporary construction at the time the permanent intersection improvements are constructed, at no further cost to Developer.	Not applicable at this time.		Can build entrances to project that will integrate to intersection at James Donlon Extension before James Donlon is constructed.
4.07	Park Fee Credit. Developer may receive partial park fee credit for certain trails and trail improvements constructed by Developer. Developer and City agree that the park in-lieu fee amount will be \$9.40/sq ft increased annually by the CPI for the SF-Oakland area, with the first increase implemented in Jan 2017 reflecting 2016 increases. However, if a lower fee is established by the City Council in accordance with the provisions of the Pittsburg Municipal Code, than that fee shall apply.	Not applicable at this time.		Possible partial park fee credit for certain trails and improvements constructed by Developer.
4.08	EBRPD Fee. Pursuant to the May 2006 MOU, Developer shall pay to the East Bay Regional Park Ditrict (EBRPD) the fee of \$2,000 upon issuance of each building permit, for the purpose of either acquiring additional public open space or for the maintenance of open space areas. Additionally, Developer shall advance up to \$300,000 in these fees to EBRPD and shall receive credit for such advance as building permits are issued. This fee shall not constitute or otherwise affect any obligations under applicable law for Developer to fund park improvements to to otherwise pay park related fees as set forth in the May 2006 MOU.	Not applicable at this time.	No Building Permits issued at this time.	Pay \$2,000 to EBRPD upon issuance of each building permit.
Article V: Cooperation -- Implementation				
5.01	Processing Application for Subsequent Approvals. The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions:			
a	Standard of Review. By adopting the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety, and general welfare. Accordingly, City shall not use its discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not inconsistent with the Project Approvals as set forth above and meet the intent and comply with any City adopted Designed Guidelines, as applicable. To the extend permitted by law, City shall not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that development under this Agreement shall comply with provisions reflected in Uniform Codes (whether building, fire, plumbing, or other applicable uniform codes) which may adopted subsequent to the Effective Date of this Agreement.	Compliant to date.		No action.

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b	Basis for Denial. City may deny and application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.	Not applicable at this time.	Subsequent approvals.	Review subsequent approvals to ensure they comply with DA.
5.02	Timely Submittals by Developer. Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans, and other necessary materials as set forth in Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.	Not applicable at this time.	Subsequent approvals.	
5.03	Timely Processing by City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, (i) providing at the Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section, Developer's reimbursement to City for such services, in accordance with standard City practice.	Not applicable at this time.	Subsequent approvals.	
5.04	Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of the Developer, use its best efforts to ensure the timely availability of such permits and approvals. City shall cooperate with Developer to obtain any and all approvals from Contra Costa County related to the construction or operation of the Drainage Improvements. City shall cooperate with Developer, CCWD and the Bureau of Reclamation in all matters related to CCWD's application to the Bureau to expand the place of use of Central Valley Project water to include the Project Site.	Not applicable at this time.		Developer shall apply for permits from other entities as required.
5.05	Lighting and Landscaping District, Park Maintenance.			
a	Developer agrees that the Project Site will be annexed into City's existing Lighting and Landscaping District, as established pursuant to City Reso No. 88-7324 as well as City's Community Facilities District 2007-1 for park maintenance, City's Community Facilities District for the maintenance of C.3 facilities as, to the extent permitted by law, that the Project shall be assessed in a manner consistent with the provisions herein.	Not applicable at this time.		Annex into Lighting and Landscaping District and Community Facilities District.
b	Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of parks.	Not applicable at this time.		No action.

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5.06	GHAD. Developer agrees to take all steps necessary to either expand the existing Southwest Pittsburg Geologic Hazard Abatement District or to establish a new GHAD, at no cost to the City or to the GHAD, to provide for, among other things, geologic hazard abatement, maintenance of detention basins, grassland maintenance, fire protection, and erosion control within portions of Project Site. Unless otherwise required by law, the parties intend that the Project Site will be assessed by the SW Pittsburg GHAD or a new GHAD upon the respective GHAD's acceptance of the GHAD Area identified in the Project Approvals (which GHAD Area shall include the detention basins and C.3 storm facilities).	Not applicable at this time.		Developer will either expand the existing Southwest Pittsburg Geologic Hazard Abatement District or to establish a new GHAD.
5.07	Police Services CFD. Developer agrees to take all steps necessary to include the Project Site into the City's existing police services Community Facilities District 2004-1, as adopted pursuant to Reso No. 04-10071 ("The Police Services District") at no cost to the City, in order to provide for police and other emergency services to the Project site. This process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the Police Services District no earlier than the issuance of a building permit for such lot.	Not applicable at this time.		Developer shall include the Project Site into the City's existing police services Community Facilities District before filing first final map. Pay levy after issuance of building permit.
5.08	Fire Services CFD. In the event the City forms a City Community Facilities district to provide for fire protection services in the City for the Contra Costa Fire Protection District and acquisition or replacement and acquisition or replacement of equipment primarily situated in the fire stations located in the City, Developer agrees to take all steps necessary to include the Project Site into the district. This inclusion of the Project into the district shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. City agrees that the levy to be assessed on each legal residential lot in the Project shall be no greater than \$75.00 and increased annually by the CPI for the SF-Oakland area, with the first increase implemented in January 2016 reflecting 2015 increases. Each legal residential lot located on the Project Site will be required to pay the levy by for this district no earlier than the issuance of a certificate of occupancy for such lot (such levy shall not go into effect for any certificate of occupancy for such lot (such levy shall not go into effect for any certificate of occupancy issued for model homes in the Project until such model home is transferred to a third party homebuyers).	Not applicable at this time.	Include into district before filing first final map.	If the City forms a City Community Facilities district for fire protection services, the Developer will include project site into district.
5.09	General Plan Maintenance Fees. Developer agrees to pay development related fee to help fund the maintenance of the Pittsburg General Plan. The General Plan Maintenance Fee will be \$125.00 per building Permit.	Not applicable at this time.	No building permits issued.	Pay \$125/building permit for GP.
5.10.	Assessment Districts or Other Funding Mechanisms.			
a	City understands that City's long term assurances to Developer concerning fee, taxes, and assessments related to Project are a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay the fees, the taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or other Funding Mechanisms, as defined in Section 3.10 of this agreement, covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district, Funding Mechanism, or any and all increases thereto, or to request or pursue assessment credits or reductions, unless otherwise provided for herein or unless such assessment, Funding Mechanism, or related increases are in place and legally effective as of the date of this Agreement's Effective Date.	Not applicable at this time.	Only applicable in event of formation of new assessment districts.	
b	At the request of Developer, City shall cooperate in the formation of, or annexation to, those assessment districts, geologic hazard abatement district, landscaping and lighting districts, community facilities district, tax-exempt financing mechanisms, or other Funding Mechanisms that Developer and City determine are needed to fund infrastructure improvements and to ensure the orderly development of the Project, at no cost to the City. City shall diligently and expeditiously process applications by Developer necessary to establish such Funding Mechanisms as long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City and which will result in no commitment of City funds. City shall diligently seek to sell any bonds to be issues and secured by such assessments upon the best terms reasonably available in the marketplace. Any and all costs associated with this Section shall be borne and/or advanced by Developer.	Not applicable at this time.	Only applicable in event of formation of new assessment districts.	

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5.11	Warranty Bonds. Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property, or open space dedications) pursuant to this Agreement shall be accompanied by a one year warranty bond in a form and in an amount, and with a surety acceptable to City or otherwise as determined in the applicable Subdivision Improvement Agreement.	Not applicable at this time.		One year warranty bond for infrastructure improvements dedicated to City.
Article VI: Standards, Laws, Procedures Governing the Project				
6.01	Vested Right to Develop. Developer shall have a vested right to develop the Project on the Project site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.	Compliant to date.		
6.02	Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the max height, bulk, and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.	Compliant to date.		
6.03	Applicable Law. Applicable Law shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approval, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying new rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.	Compliant to date.		
6.04	Uniform Codes. Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City's then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limited construction of all or any part of the Project.	Not applicable at this time.		
6.05	Moratorium And Conflicting Enactments. To the extent consistent with State Law, if any ordinance, resolution, or other measure in enacted, whether by action of the City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution, or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.	Not applicable at this time.		
6.06	Environmental Mitigation. The parties understand that the EIR for the Project is a project level CEQA document intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to the EIR, City agrees to use the EIR in connection with the processing of any Subsequent Approval to the extend allowed by law. City agrees not to impose on Developer any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the Mitigation Monitoring Program described in the FEIR, specifically required by Applicable Law, or as properly required through the design or architecture review process as long as such mitigation measures or other conditions are imposed in a manner consistent with applicable design review guidelines.	Compliant to date		

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6.07	Life of Subdivision Maps, Development Approvals, and Permits. To the extend consistent with Applicable Law, the term of any subdivision map or any other map, permit, rezoning, or other land use entitlement approved as a Project Approval or a Subsequent Approval shall not include any period of time during which any applicable development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits, or delays the construction of the Project. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable court order or other legal requirement prevents the processing of any Subsequent Approval or any Project development activities.	Not applicable at this time.		
6.08	State and Federal Law. As provided in California government Code 65869.5, if any state or federal laws or regulations, enacted after this Agreement's Effective Date prevent or preclude compliance with one or more provisions of this Agreement ("Changes in the Law"), such provision of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.	Not applicable at this time.		
6.09	Timing of Project Construction and Completion.			
a	Project Phasing. The Project is expected to be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular time period, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition, and other similar factors.	Compliant to date.		
b	The parties agree that the Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time and Developer shall determine which part of the Project Site to develop first and at Developer's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co v City of Camarillo, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgement. Developer's rights under this Section 6.09b shall be subject to the requirement that adequate infrastructure to service each phase of the Project is constructed concurrently with such phase. the City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable law.	Compliant to date.		
c	Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.	Compliant to date.		
6.10.	Exempting Fees, Mitigation Measures and Similar Requirements Imposed by Outside Agencies. Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section shall not prohibit the City from imposing on Developer any fee, mitigation measure, or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State, or Federal obligations and implemented by the City in cooperation with such local, regional, state, federal agencies, provided such fee, mitigation measure, or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City as, for example, stormwater related C.3 requirements and increases thereto.	Compliant to date.		

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6.11	City's Joint-Inspection Jurisdiction. Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Compliant to date.		
Article VII: Amendment				
7.01	Amendment to Project Approvals, Subsequent Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:			
a	Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine (i) whether the requested amendment or modification is minor when considered in light of the project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes, and State or Federal Law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an Administrative Project Amendment and the City Manager or his/her designee may, except to the extend otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale, or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layout, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.	Not applicable at this time.		City to review any requested amendments.
b	Non Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.	Not applicable at this time.		Amendments to be reviewed.
7.02	Amendment of this Agreement. This Agreement may be amended from time to time in whole or in part by mutual written content of the parties hereto or their successors in interest as follows:			
a	The City Manager or his/her designee may, except to the extent otherwise required by law, enter into certain amendments of this Agreement on behalf of the City as long as any such amendment does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height of size of proposed buildings or (vi) monetary contributions by Developer, and shall not, except to the extend otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. For purposes of this Section, the term substantially affect shall be evaluated in context of the entire project.	Not applicable at this time.		
b	Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, whether done administratively or not, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by both parties.	Not applicable at this time.		
c	Amendment Limitations. In consideration of the cope of the benefits to City set forth in this Agreement, any amendment to this Agreement shall only be subject to such new terms and conditions including new exactions or other obligations as are reasonably related to the impacts on City directly attributable to such amendment.	Not applicable at this time.		
Article VIII: Assignment, Transfer, and Notice				
8.01	Assignment of Interests, Rights and Obligations. Developer may transfer or assign all or any portion of its interests, rights, or obligations under this Agreement, the Project Approvals, or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including without limitation, purchasers or ground lessees of lots, parcels, or facilities.			
8.02	Transfer Agreements.			

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a	In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a "Non-Assuming Transferee", Developer and the transferee shall enter into a written agreement regarding the respective interests rights, and obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address ant other matter deemed by developer to be necessary or appropriate in connection with the transfer or assignment.	Not applicable at this time.		
b	Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City's prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within 30 days of a written request by Developer for City's consent shall be deemed City's approval of the Transfer Agreement in question. City may refuse to give its consent only id, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable determination be able to perform the obligations proposed to be assumed by such trasnferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent ot a proposed transferee pursuant to this Section 8.02b if such transferee has a net worth of at least Ten Million Dollars documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa Countu, Developer shall automatically be released from those obligations assumed by the transferee therein.	Not applicable at this time.		
c	Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.	Not applicable at this time.		
8.03	Non-Assuming Transferees. Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than 10 lots to a single retail builder, or (iii) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school, or other nonresidential uses. The transferee in such a transaction and its successors shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this section shall exempt any property transferred to Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.	Not applicable at this time.		
8.04	Notice of Compliance Generally. Subject to the City's finding that the facts contemplated by clauses (i) through (iii) herein are true and accurate, within 30 days following any written request which Developer may make from time to time, City shall execute and deliver to Developer a written "Notice of Compliance" in recordable form, duly executed and acknowledged by the City, that certifies that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default and (iii) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.	Not applicable at this time.		
Article IX: Cooperation in the Event of Legal Challenge				
9.01	Cooperation			

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a	Developer agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal, or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to all court costs and attorney's fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.	Compliant to date.		No action.
b	Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.	Compliant to date.		No action.
c	The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any provision of this Agreement, or the Agreement as a whole, is invalidated rendered null, or set aside by a court of competent jurisdiction, the parties agree to the bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.	Compliant to date.		No action.
9.02	Cure; Reapproval.			
a	If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgement in such action or proceeding, the parties agree to use their respective best efforts to sustain or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise:	Not applicable at this time.		
i	If any Judgement requires reconsideration or consideration by the City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgement invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgement or upon which the Judgement is based in a manner consistent with the intent of this Agreement and the Judgement. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgement necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof.	Not applicable at this time.		
ii	Acting in a manner consistent with the intent of this Agreement or a Judgement includes, but is not limited to, recognizing that the parties intent that Developer may develop a 351 single-family residential unit project, and adopting such ordinances, resolutions, and other enactments, including by not limited to, a general plan amendment, rezoning, vesting subdivision map approvals development plan approvals, PD plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificate of occupancy, final development plans, development agreements, permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgement.	Not applicable at this time.		
b	The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.	Compliant to date.		No action.
Article X: Defaults; Remedies; Termination				

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10.01	Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continued uncured for a period of 30 days following written notice of such failure from the other party, shall constitute a default under this Agreement. The Complaining Party's notice shall specify the nature of the alleged failure and, may specify the manner in which the failure and, may specify the manner in which the failure satisfactorily may be cured By the other party. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot be reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than 30 days after the Defaulting Party's receipt of the Default Notice), the Defaulting party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within 120 days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement, or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party shall take no further action.	Not applicable at this time.		
10.02	Termination. If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated 60 days thereafter; provided, however, that if Developer files an action to challenge City's termination of this Agreement within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).	Not applicable at this time.		
10.03	Periodic Review.			
a	Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every 12 months following the execution of this Agreement , City shall review the extend of good-faith compliance by Developer with the terms of this Agreement. This review shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code 65865.1. Developer also agrees to pay City annually the greater of \$5000 or the actual cost of Periodic Review Fee (not to exceed \$10,000). The \$5,000 shall be increased annually thereafter by the CPI for the San Francisco-Oakland Area, with the first increase implemented in January 2017 reflecting 2016 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted.		Payment request sent. 1/18/24	Complete DA Review annually. Developer pays City fee.
b	Notice. At least 10 days prior to the Periodic Review, and in the manner prescribed in Article 12 of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the City Manager.	Compliant to date.		Notice sent at least 10 days prior.

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c	Good Faith Compliance. During the Periodic Review, the City Manager shall review Developer's good faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that the Developer has not complied wit such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally Developer and City.	Compliant to date.		City Manager make written findings and determination if Developer has complied in good faith.
d	Failure to Properly Conduct Periodic Review. If, after 30 days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.	Compliant to date.		No action.
e	Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within 30 days, following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.	Compliant to date.		Provide developer written notice of compliance within 30 days of request.
10.04	Default by City or Developer. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.	Not applicable at this time.		
10.05	Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay or longer, as may be mutually agreed upon in writing.	Not applicable at this time.		
10.06	Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.	Not applicable at this time.		
10.07	California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Compliant to date.		Follow state law.

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10.08	Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written made in the course of the mediation by any of the parties, their agents. employees, experts and attorneys, and by the mediator and any JAMS employees are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of the process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session or 90 days of filing the written request of mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provision of this Section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses to be paid by the party against whom enforcement is ordered. Nothing in this Section shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters begin addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.	Not applicable at this time.		
10.09	Attorney's Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorney's fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.	Not applicable at this time.		
Article XI: No Agency, Joint Venture or Partnership				
	It is specifically understood and agreed to by and between the parties hereto unless otherwise expressly provided herein (i) the subject development is a private development; (ii) City have no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer. The City agrees that Developer's obligations under this Agreement related to the construction of Project water, sewer and drainage infrastructure improvements, the grading and construction of traffic improvements are all public works of improvement the City is requiring as a condition of regulatory approval of the Project and that the Project is an otherwise private development. The City further agrees that it will contribute no more money, or the equivalent of money, to the overall Project than is required to construct the Public Improvements and that City maintain no proprietary interest in the overall Project.	Compliant to date.		No action.
Article XII: Miscellaneous				
12.01	Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.	Compliant to date.		No action.

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12.02	Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this agreement shall be enforceable by party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or an other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by the City that changes, alters, or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.	Compliant to date.		
12.03	Finding. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.	Compliant to date.		No action.
12.04	Severability. If any term or provision of this Agreement or the application of any term or provision of this Agreement to a particular situation, is held by a competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination the other party.	Not applicable at this time.		
12.05	Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Compliant to date.		Deliver documents as necessary.
12.06	Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval, or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.	Compliant to date.		No action.
12.07	Other Misc Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.	Compliant to date.		No action.
12.08	Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil code 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.	Compliant to date.		No action.

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12.09	Notices. Any notice or communication required hereunder between City or Developer must be in writing and may be given either personally, by fax (with original forwarded by regular US mail), by registered or certified mail (return receipt requested), or by FedEx or or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday or Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or b) 5 days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the US mail. If given by Federal Express or a similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving 10 days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below. If to City, to: ☐ City Manager City of Pittsburg Civic Center 65 Civic Avenue Pittsburg, CA 94565-2830 With Copies , to:☐ Ruthann G. Zeigler City Attorney Meyers Nave 555 Capitol Mall, Suite 1200 Sacramento, CA 95814	Compliant to date.		10 days written notice.
12.10.	Entire Agreement, Counterparts, and Exhibits. This Agreement is executed in two duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 32 pages and 3 exhibits which constitute in full, the final and exclusive understanding and agreement of the parties supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof, excluding the March 2006 MOU, the May 2006 MOU, and the July 2005 Faria MOU. The Parties, however, agree that to the extent Developer complies with all terms and conditions of this Development Agreement, Developer has fully met the obligations of the March 2006 MOU and Sections B, C and D of the May 2006 MOU. All waivers of any provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes: Exhibit A - Legal Description Exhibit A-1 - Project Site Diagram Exhibit B - Applicable Fees Exhibit C - Affordable Housing Agreement.	Compliant to date.		No action.
12.11	Recordation of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.	Compliant. Recorded Thursday, April 21, 2016.	Recorded on Thursday, April 21, 2016	Record DA.

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Periodic Review of the Sky Ranch II)
Development Agreement and)
Determination as to Compliance)
With Development Agreement)

RESOLUTION NO. 24-

WHEREAS, a Development Agreement between the City of Pittsburgh and Sky Ranch Land Investors, LLC, was executed on July 21, 2017, for the Sky Ranch II Property; and

WHEREAS, California Government Code Section 65864 *et seq.* ("Development Agreement Statutes") authorizes and regulates the execution of development agreements ("DA") between certain public entities and persons who desire to develop private property within a public entity's jurisdiction; and

WHEREAS, pursuant to the Development Agreement Statutes, the City established procedures for the consideration of DA applications by property owners or other persons having an interest in property within City's jurisdiction; and

WHEREAS, Section 65865.1 requires City to conduct a periodic review of the City's active Development Agreements, at which time each respective developer is required to demonstrate good faith compliance with the terms of the Development Agreement ("Periodic Review"); and

WHEREAS, if, as a result of the Periodic Review, the City finds and determines, on the basis of substantial evidence, that a developer has not complied in good faith with the terms and conditions of the Development Agreement, the City may terminate or modify the DA pursuant to the Development Agreement Statutes; and

WHEREAS, the last periodic review of the Sky Ranch II Development Agreement was conducted, and on May 1, 2023, the City Council determined that the developer was in compliance with the terms of the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburgh finds and determines as follows:

Section 1. Recitals

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

Section 2. Compliance with Development Agreement

The City Council hereby finds and determines that, based on the information provided by the Developer and staff, as well as the information contained in the "Sky Ranch II DA – 2023 Annual Review", attached hereto and incorporated herein by reference as "Exhibit 1," the Developer has demonstrated good faith compliance with the Sky Ranch II Development Agreement.

Section 3. Certificate of Compliance

The City Council hereby directs and authorizes the City Manager to issue a certificate codifying the "Finding of Compliance" for Sky Ranch II in a form that can be recorded by the Developer.

Section 4. Certification

The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 15th day of April, 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk

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Primary Column	Column2	Status	Notes	Action Items?
Article II: Effective Date; Term				
2.01	Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the "Effective Date").	See Comments/Action Items	Ordinance No. 17-1431 approving the DA was adopted on June 5, 2017, with an effective date of July 21, 2017	
2.02	Term. The term of this agreement shall commence upon the date the ordinance approving this agreement and continue for a period of twenty (20) years (the "Term")	See Comments/Action Items	Based on the effective date of July 21, 2017, the DA will expire on July 21, 2037	
Article III: Obligations of Developer				
3.01	Drainage Improvements. Subject to the terms of this Agreement, as a condition of approval to one or more of the Project Approvals, Developer agrees to construct and offer dedication to the City those Project storm water drainage improvements to be located within City's boundaries and required to serve the Project Site ("Drainage Improvements"). The City shall accept the offer of dedication of the Drainage Improvements, as long as the Drainage Improvements comply with the City's standards, applicable rules and regulations, and this Agreement. The parties agree that the construction of the Drainage Improvements shall be phased according to a construction schedule determined by Developer, subject to the written approval of the City Manager. City shall not require any improvements to onsite or offsite drainage facilities to address pre-existing deficiencies provided that Developer demonstrates to City's reasonable satisfaction that impact to downstream facilities are not being exacerbated.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for engineering or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
3.02	Facility Reserve Charges. Developer agrees to pay City's Facility Reserve Charges ("FRC" as set or modified by the City Council from time to time.	Not Applicable (at this time)		
3.03	Water Infrastructure. (1) Developer shall comply with the 2016 Water System Master Plan, as amended. Developer shall have the option subject to the written approval by the City Manager to provide water infrastructure facilities in phases subject to a storage requirement pursuant to the 2016 Water System Master Plan, as amended. (2) Developer shall have the right to obtain a certain number of building permits for homes on lots which are in the Zone II water service, even if the new Zone II water reservoir and appurtenant improvements have not yet been constructed at such time. [financing information...] (3) Developer shall design and construct a Zone IV water reservoir and all appurtenant improvements relating to the reservoir on the 1.23 acre parcel in accordance with the most current Water Master Plan. [financing information...] (4) The City's 2016 Water Master Plan requires the Segment 1E pipeline to be constructed prior to the issuance of the 807th equivalent single family dwelling unit in the Zone II infill and SE Hills service areas. The pipeline segment shall be designed, constructed, and managed by the City in accordance with the most current Water Master Plan. [payment....]	Not Applicable (at this time)		
3.04	School Facilities Impact Mitigation. Developer shall pay in lieu school impact fees in accordance with Government Code 65995 et seq. Compliance with this Section shall satisfy all of Developer's obligations required by City to mitigate school impacts resulting from the Project.	Not Applicable (at this time)		

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3.05	Applicable Fees. City may levy development fees, and charges during the term of this Agreement relative to the development of the Project Site which are in force and effect as of the Effective Date, as more particularly described and according to the payment schedule set forth on Exhibit B "Applicable Fees". Unless otherwise provided in this Agreement, no development fees or charges or categories shall be imposed on the project other than those fees. All fees related to third-party government agencies that are paid directly to third-party government agencies are not within the scope of this Agreement.	Not Applicable (at this time)		
3.06	Applicable Fee Adjustments. Developer shall pay fees consistent with Section 3.05 and the applicable adjustments currently provided in such fees, and as modified from time to time by the City, whether such adjustment or modification is an increase or decrease. Developer retains the right to challenge the imposition of any new fees not referenced in this Agreement or the modification, amendment or adjustment of all Applicable Fees pursuant to Government Code 66000 et seq., not already authorized by ordinances, resolutions, or policies in place at the time of the Agreement's execution. Should the City Council approve a new AB 1600 fee study and/or authorize a decrease in any Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower free, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.	Not Applicable (at this time)		
3.07	City Local Traffic Mitigation Fee. Developer shall pay the City Local Traffic Mitigation Fee, in the amount in effect as of the Effective Date and subject to adjustments in accordance with Resolution No. 07-10917 with credit for certain improvements constructed by Developer per Section 4.04 below. If the City Council approved a new AB 1600 fee study and/or authorizes a decrease in any of the applicable fees during the term of this Agreement by ordinance or resolution, Developer shall have the option at its sole discretion to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees. Developer agrees that City may use the Local Traffic Mitigation Fee paid by Developer pursuant to this Section for the City's share of the James Donlon Expressway. This use by the City shall not decrease or otherwise modify Developer's other obligations under this Agreement, including/not limited to Section 3.13.	Not Applicable (at this time)		
3.08	Regional Traffic Fee. Developer shall pay the ECCRFA regional traffic fee should it be imposed by the City in an amount equal to or less than the amount paid by projects in the Cities of Antioch, Brentwood, and Oakley or in accordance with the existing valid Memorandum of Understanding dated June 29, 2010, as amended, whichever is less.	Not Applicable (at this time)		

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3.09	Fees, Assessment and/or Taxes to be Paid by Developer. Developer agrees to pay its fair share of any levies imposed by any assessment district, geologic hazard abatement district, landscaping and lighting district, community facilities district, tax-exempt financing mechanisms or other funding mechanisms related to public safety; traffic; sewer; water; fire; the prevention, mitigation, abatement, or control of geological hazards; or other infrastructure improvements (including, without limitation, design, acquisition, construction and maintenance cost) within the Project Site, provided that such Funding Mechanism is referenced herein or was legally created pursuant to applicable law.	Not Applicable (at this time)		
3.10.	Affordable Housing. Developer shall comply with PMC 18.86.080 and VTM Condition of Approval No. 12 by constructing 42 rental accessory dwelling units within the Project. A covenant shall be recorded limiting the amount of rent that may be charged for these accessory dwelling units, consistent with the terms and conditions set forth in the affordable housing agreement. Prior to the City's issuance of the first certificate of occupancy Developer agrees to enter into an affordable housing agreement with the City... attached as Affordable Housing Agreement... which further memorializes the provisions of this Section 3.10 and is consistent with applicable law, including PMC 18.50. Developer agrees that the accessory dwelling units referenced in this section shall not be built or otherwise allowed on adjoining lots without the prior written approval of the City Manager. City agrees that Developer shall not be required to pay any additional City fees associated with the ADUs except for those fees the City is required to charge by the State or other governmental entities with jurisdiction over the Project. (a) Timing. (b) Inclusionary Housing Ordinance.	Not Applicable (at this time)		
3.11	Security Improvements. (a) Developer shall pay to the City the actual cost incurred by City (=<\$60000) towards funding the acquisition and installation of security camera(s) at 2 intersections identified by the City. The security Cameras will be installed under supervision of City's Police Chief. Developer shall pay such costs within 30 days of receipt of invoice. (b) Developer shall install the basic home security wiring in the Project homes (first floor windows and doors). Shall offer 1 year of professional monitoring service to new homeowners. The monitoring service shall be at the election of the new homeowner.	Not Applicable (at this time)		
3.12	Solar Roof System. Developer shall install a solar roof system on on of its model homes for example purposes only and offer solar installation as an option at the homeowner's expense.	Not Applicable (at this time)		
3.13	Construction of James Donlon Expressway within the Limits of the Project Site. Developer shall construct a portion of the James Donlon Expressway in accordance with VTM Condition of Approval No. 59 and MM-H7. Should the median and inside lanes not be installed at the time Developer constructs its required improvement, then Developer shall grade the median and inside lanes and receive credits for such work from City if such credits are not provided by East Contra Costa Regional Fee & Finance Authority.	Not Applicable (at this time)		

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3.14	In Lieu Fees or Dedication of Park Site. At the written discretion of the City Manager, Developer shall pay an in lieu park fee, or dedicate park land, or perform a combination of both, equivalent to 7.18 acres as required by the project approval. The dedicated Park Site shall be rough graded in accordance with City specifications with no more than a 3% slope, adjacent curb, gutter, sidewalk and utility stubs shall have been installed by Developer and the Park Site shall be free and clear of all liens, bonds, taxes, assessments, and other charges, which costs shall be assumed by Developer. Developer agrees to make its offer of dedication of the Park Site to City at the same time it constructs the phase of the project in which the Park Site is located. City agrees that it shall accept the offer of dedication of the Park Site within 180 days of Developer's offer of dedication o the Park site, provided that (a) the park is in compliance with the requirements of this Section (ii) all necessary actions have been completed to include the Park Site within a new or existing lighting or landscaping district (see 5.05).	Not Applicable (at this time)		
3.15	Park Improvements. Prior to the offer of dedication of the Park Site pursuant to Section 3.14 above, Developer shall install park improvements identified by the City at a cost not to exceed \$250,000 not including frontage improvements. This amount shall be increased annually by the CPI for the SF-Oakland area with the first increase implemented in January 2018 reflecting 2017. Such costs shall not be credited against Developer's park obligations set forth in Section 3.14 above.	Not Applicable (at this time)		
3.16	Electric Vehicle Charge. Developer shall install, in the garage of each home, conduit from the electric panel in order for homeowners, at their election and cost, to install an electric vehicle charging system.	Not Applicable (at this time)		
Article IV: Obligations of City				
4.01	Obligations of City Generally. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City as set forth herein.	Compliant		
4.02	Availability of Public Services.			
a	General. To the extend permitted by law and consistent with its authority, City shall reserve such capacity for water services as may be necessary to serve the Project. This reservation of water infrastructure capacity shall be assured for the Term to the extent consistent with applicable law.	Not Applicable (at this time)		
b	Construction Water. City shall make construction water available to the Project by permitting the Project to hook up to existing City water supply infrastructure at a location reasonable determined by the City, at Developer's cost and on those terms and conditions and charges customarily applied by City to similar project consistent with City standards. City shall also permit Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer's use in any and all Project grading and construction operations as long as such water is unrelated to potable use.	Not Applicable (at this time)		

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4.03	Developer's Right to Rebuild. City agrees that Developer, in Developer sole's discretion may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, change in seismic requirements, acts of God, acts of terrorism, or damage to work in progress by reason of fire, floods, or other casualties. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and this agreement.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
4.04	Reimbursement of Infrastructure Costs			
a	Reimbursement. Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, the off-site water tank, pump station, sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project's fair share obligation for such infrastructure, City shall reimburse Developer for the City's portion of such costs (including any management fees provided for in this Agreement), subject to the City's prior verification through inspection of the construction that is subject to such reimbursement and upon final acceptance of the infrastructure by the City. This reimbursement shall be paid within 60 days after the City's final acceptance or at such other time as mutually agreed upon in writing by the parties. Developer shall be entitled to a management fee of 5% for City's share of approved infrastructure costs, including but not limited to design and special inspection costs. The management obligations of the Developer hereunder shall include contracting and managing the construction of the infrastructure , retaining copies of records, photographs and as built's for the improvements as well as attending meetings and providing necessary reports as reasonably requested by City.	Compliant	There has been no need to exercise this provision of the agreement.	

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b	City's Authorization of Reimbursement. Notwithstanding any other provision of this Section, or of this Agreement, or of VTM provisions, City shall not be responsible to reimburse or credit Developer for any costs, including as referenced in Section 4.04(a) herein, unless prior to Developer incurring any costs for which Developer will request reimbursement from City, Developer shall first provide written documentation as to the work to be performed, the estimated costs thereof, including a not-to-exceed cap, and such other details as reasonably requested by the City Manager and the City Manager approves the proposed costs and related work. If the City Manager fails to respond within thirty (30) days of its receipt of such estimated costs, Developer shall provide a second written notice to the City Manager and to the City Engineer, if neither responds within thirty (30) days of the City's receipt of the second request, the request shall be deemed approved. The City Manager shall have the discretion to require Developer to obtain competitive bids on any work for which Developer may request reimbursement or credit from the City where the total cost (not just the City's share) of that work is One Hundred Thousand Dollars (\$100,000) or more. City shall also have the opportunity to inspect any and all infrastructure during its construction, as well as to review any work product for which Developer requests reimbursement or credits. If mutually agreed by the parties in writing, any reimbursement due Developer pursuant to this Agreement may be satisfied by City in the form of credits, which can actually be used by Developer to offset Developer's payment of any Applicable Fees. In the event there are not enough credits to fully satisfy the reimbursement due Developer and subject to the terms of the mutual agreement between the parties referenced in the prior sentence, City shall reimburse Developer within thirty (30) days of invoicing.	Compliant	There has been no need to exercise this provision of the agreement.	
4.05	Park Fee Credit. Developer and City agree that the park in-lieu fee amount will be Nine and 40/100ths dollars (\$9.40) per square foot (unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the CPI for the SF-Oakland area, with the first increase implemented in January 2017 reflecting 2016 increases. The timing of the payment of the park in lieu fee shall be satisfied as set forth in Section 3.14 above.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for engineering or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
Article V: Cooperation-- Implementation				
5.01	Processing Application for Subsequent Approvals. The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions:			

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a	Standard of Review. By adopting the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its discretionary decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not Inconsistent with the Project Approvals as set forth above, and meet the intent and comply with any City adopted Design Guidelines, as applicable. To the extent permitted by law, City shall not use its discretionary authority in considering these Subsequent Approvals applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that development under this Agreement shall comply with provisions reflected in Uniform Codes which may be adopted subsequent to the Effective Date of the Agreement.	Compliant to date.		
b	Basis for Denial. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
5.02	Timely Submittals by Developer. Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to 1) provide to city in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and b) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.	Compliant to date.	There has been no need to exercise this provision of the agreement.	

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5.03	Timely Processing by City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, a) providing at Developer's expense and subject to Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; b) if legally required, providing notice and holding public hearings; and c) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section. Developer's reimbursement to City for such services shall be made in amount equal to City's actual costs of providing such services, in accordance with standard City practice.	Compliant to date.	Developer has not submitted any applications for subsequent approvals for the project.	
5.04	Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of Developer, use its best efforts to ensure timely availability of such permits and approvals. City shall cooperate with Developer to obtain any and all approvals from Contra Costa County related to the construction or operation of the Drainage Improvements. City shall also cooperate with Developer, CCWD, and Bureau of reclamation in all matters related to CCWD's application to the Bureau to expand the place of use of Central Valley Project water to include the Project Site.	Compliant to date.	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for engineering or building permits for the project.	
5.05	Lighting and Landscaping District, Park Maintenance.			
a	Developer agrees that the Project Site will be annexed into City's existing Lighting and Landscaping District, as established pursuant to City Reso No. 88-7324 as well as City's Community Facilities District 2007-1 for park maintenance, City's Community Facilities District for the maintenance of C.3 facilities as, to the extent permitted by law, that the Project shall be assessed in a manner consistent with the provisions herein.	Not Applicable (at this time)		
b	Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of parks.	Not Applicable (at this time)		

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5.06	GHAD. GHAD. Developer agrees to take all steps necessary to either expand the existing Southwest Pittsburg Geologic Hazard Abatement District or to establish a new GHAD, at no cost to the City or to the GHAD, to provide for, among other things, geologic hazard abatement, maintenance of detention basins, grassland maintenance, fire protection, and erosion control within portions of Project Site. Unless otherwise required by law, the parties intend that the Project Site will be assessed by the SW Pittsburg GHAD or a new GHAD upon the respective GHAD's acceptance of the GHAD Area identified in the Project Approvals (which GHAD Area shall include the detention basins).	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for engineering or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
5.07	Police Services CFD. Developer agrees to take all steps necessary to include the Project Site into the City's existing police services Community Facilities District 2004-1, as adopted pursuant to Reso No. 04-10071 ("The Police Services District") at no cost to the City, in order to provide for police and other emergency services to the Project site. This process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the Police Services District no earlier than the issuance of a building permit for such lot.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for engineering or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
5.08	Fire Services CFD. Developer agrees to annex the Project site into the City's Fire Safety and Emergency Services Community Facilities District 2017-1, as adopted pursuant to Resolution No. 17-13311 at no cost to the City, in order to provide for fire safety and emergency services for the project. This process shall be completed, to the reasonable satisfaction of the City manager and City Attorney, before filing the first final map on the project.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for engineering or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
5.09	General Plan Maintenance Fee. Developer agrees to pay a development related fee to help fund the maintenance of the Pittsburg General Plan. The General Plan Maintenance Fee will be One Hundred Twenty-five Dollars per building permit (unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the CPI for the SF-Oakland area, with the first increase implemented in January 2018 reflecting 2017 increases.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, the Developer has not submitted applications for engineering or building permits for the project. The City shall seek performance of Developer's obligations prior to or as part of project development.	
5.10.	Assessment Districts or Other Funding Mechanisms.			
a	City understands that City's long term assurances to Developer concerning fee, taxes, and assessments related to Project are a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay the fees, the taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or other Funding Mechanisms, as defined in Section 3.09 of this agreement, covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district, Funding Mechanism, or any and all increases thereto, or to request or pursue assessment credits or reductions, unless otherwise provided for herein or unless such assessment, Funding Mechanism, or related increases are in place and legally effective as of the date of this Agreement's Effective Date.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 5.09.	

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b	At the request of Developer, City shall cooperate in the formation of, or annexation to, those assessment districts, geologic hazard abatement district, landscaping and lighting districts, community facilities district, tax-exempt financing mechanisms, or other Funding Mechanisms that Developer and City determine are needed to fund infrastructure improvements and to ensure the orderly development of the Project, at no cost to the City. City shall diligently and expeditiously process applications by Developer necessary to establish such Funding Mechanisms as long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City and which will result in no commitment of City funds. City shall diligently seek to sell any bonds to be issues and secured by such assessments upon the best terms reasonably available in the marketplace. Any and all costs associated with this Section shall be borne and/or advanced by Developer.	Not Applicable (at this time)		
5.11	Warranty Bonds. Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property, or open space dedications) pursuant to this Agreement shall be accompanied by a one year warranty bond in a form and in an amount, and with a surety acceptable to City or otherwise as determined in the applicable Subdivision Improvement Agreement.	Not Applicable (at this time)		
Article VI: Standards, Laws and Procedures Governing the Project				
6.01	Vested Right to Develop. Developer shall have a vested right to develop the Project on the Project site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.	Compliant to date.		
6.02	Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the max height, bulk, and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.	Compliant to date.		
6.03	Applicable Law. Applicable Law shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approval, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying new rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.	Compliant to date.		

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6.04	Uniform Codes. Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City's then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limited construction of all or any part of the Project.	Compliant to date.		
6.05	Moratorium And Conflicting Enactments. To the extent consistent with State Law, if any ordinance, resolution, or other measure in enacted, whether by action of the City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution, or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.	Compliant to date.	No moratoria or conflicting enactments were adopted during this review period.	
6.06	Environmental Mitigation. The parties understand that the EIR for the Project is a project level CEQA document intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to the EIR, City agrees to use the EIR in connection with the processing of any Subsequent Approval to the extend allowed by law. City agrees not to impose on Developer any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the Mitigation Monitoring Program described in the FEIR, specifically required by Applicable Law, or as properly required through the design or architecture review process as long as such mitigation measures or other conditions are imposed in a manner consistent with applicable design review guidelines.	Compliant		
6.07	Life of Subdivision Maps, Development Approvals, and Permits. To the extend consistent with Applicable Law, the term of any subdivision map or any other map, permit, rezoning, or other land use entitlement approved as a Project Approval or a Subsequent Approval shall not include any period of time during which any applicable development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies hat regulate land use, development or the provision of services to the land, prevents, prohibits, or delays the construction of the Project. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable court order or other legal requirement prevents the processing of any Subsequent Approval or any Project development activities.	Compliant	Construction of project is scheduled to be completed prior to the expiration of all approvals.	

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6.08	State and Federal Law. As provided in California government Code 65869.5, if any state or federal laws or regulations, enacted after this Agreement's Effective Date prevent or preclude compliance with one or more provisions of this Agreement ("Changes in the Law"), such provision of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.	Compliant	There has been no need to exercise this provision of the agreement.	
6.09	Timing of Project Construction and Completion.			
a	Project Phasing. The Project is expected to be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular time period, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition, and other similar factors.	Compliant to date.		
b	The parties agree that the Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time and Developer shall determine which part of the Project Site to develop first and at Developer's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co v City of Camarillo, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgement. Developer's rights under this Section 6.09b shall be subject to the requirement that adequate infrastructure to service each phase of the Project is constructed concurrently with such phase. the City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable law.	Compliant to date.		
c	Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.	Compliant to date.		

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6.10.	Exempting Fees, Mitigation Measures and Similar Requirements Imposed by Outside Agencies. Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section shall not prohibit the City from imposing on Developer any fee, mitigation measure, or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State, or Federal obligations and implemented by the City in cooperation with such local, regional, state, federal agencies, provided such fee, mitigation measure, or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City.	Compliant to date.		
6.11	City's Joint-Inspection Jurisdiction. Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.	Compliant to date.		
Article VII: Amendment				
7.01	Amendment to Project Approvals, Subsequent Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:			
a	Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine (i) whether the requested amendment or modification is minor when considered in light of the project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes, and State or Federal Law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an Administrative Project Amendment and the City Manager or his/her designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale, or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layout, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.	Not Applicable (at this time)		

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b	Non Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.	Not Applicable (at this time)		
7.02	Amendment of this Agreement. Amendment may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:			
a	Admin Agreement Amendments.The City Manager, or his/her designee, may, except to the extent otherwise required by law enter into certain amendments of this Agreement on behalf of the City as long as any such amendment does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions, or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Developer, and shall not, except to the extend otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. For purposes of this Section, the term substantially affect shall be evaluated in context of the entire project.	Not Applicable (at this time)		
b	Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, whether done administratively or not, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by both parties.	Not Applicable (at this time)		
c	Amendment Limitations. In consideration of the cope of the benefits to City set forth in this Agreement, any amendment to this Agreement shall only be subject to such new terms and conditions including new exactions or other obligations as are reasonably related to the impacts on City directly attributable to such amendment,	Not Applicable (at this time)		
Article VII: Assignment, Transfer, and Notice				
8.01	Assignment of Interests, Rights and Obligations. Developer may transfer or assign all or any portion of its interests, rights, or obligations under this Agreement, the Project Approvals, or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including without limitation, purchasers or ground lessees of lots, parcels, or facilities.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	
8.02	Transfer Agreements.			

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a	In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a "Non-Assuming Transferee", Developer and the transferee shall enter into a written agreement regarding the respective interests rights, and obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations (ii) transfer to the transferee vested rights to improve that portion of the Project beign transferred and (iii) address ant other matter deemed by developer to be necessary or appropriate in connection with the transfer or assignment.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	
b	Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City's prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within 30 days of a written request by Developer for City's consent shall be deemed City's approval of the Transfer Agreement in question. City may refuse to give its consent only id, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable determination be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent to a proposed transferee pursuant to this Section 8.02b if such transferee has a net worth of at least Ten Million Dollars documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa County, Developer shall automatically be released from those obligations assumed by the transferee therein.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	
c	Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	
8.03	Non-Assuming Transferees. Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than 10 lots to a single retail builder, or (iii) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school, or other nonresidential uses. The transferee in such a transaction and its successors shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this section shall exempt any property transferred to Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	

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8.04	Notice of Compliance Generally. Subject to the City's finding that the facts contemplated by clauses (i) through (iii) herein are true and accurate, within 30 days following any written request which Developer may make from time to time, City shall execute and deliver to Developer a written "Notice of Compliance" in recordable form, duly executed and acknowledged by the City, that certifies that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default and (iii) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.	Not Applicable (at this time)	There has been no need to exercise this provision of the agreement.	
Article IX: Cooperation in the Event of Legal Challenge				
9.01	Cooperation.			
a	Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorney's fees expended by city in defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.	Compliant to date	There has been no need to exercise this provision of the agreement.	
b	Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
c	The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any provision of this Agreement, or the Agreement as a whole, is invalidated rendered null, or set aside by a court of competent jurisdiction, the parties agree to the bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.	Compliant to date.	There has been no need to exercise this provision of the agreement.	
9.02	Cure; Reapproval			

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a	If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgement in such action or proceeding, the parties agree to use their respective best efforts to sustain or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise:	Compliant to date.	There has been no need to exercise this provision of the agreement	
i	If any Judgement requires reconsideration or consideration by the City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgement invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgement or upon which the Judgement is based in a manner consistent with the intent of this Agreement and the Judgement. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgement necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof.	Compliant to date.	There has been no need to exercise this provision of the agreement	
ii	Acting in a manner consistent with the intent of this Agreement or a Judgement includes, but is not limited to, recognizing that the parties intent hat Developer may develop a 415 single-family residential unit project, and adopting such ordinances, resolutions, and other enactments, including by not limited to, a general plan amendment, rezoning, vesting subdivision map approvals development plan approvals, PD plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificate of occupancy, final development plans, development agreements, permits, resubdivisions, and ant amendments to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgement.	Compliant to date.	There has been no need to exercise this provision of the agreement	
b	The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.	Compliant to date.	There has been no need to exercise this provision of the agreement	
Article X: Defaults; Remedies; Termination				

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10.01	Defaults. Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continued uncured for a period of 30 days following written notice of such failure from the other party, shall constitute a default under this Agreement. The Complaining Party's notice shall specify the nature of the alleged failure and, may specify the manner in which the failure and, may specify the manner in which the failure satisfactorily may be cured By the other party. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot be reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than 30 days after the Defaulting Party's receipt of the Default Notice), the Defaulting party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within 120 days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement, or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party shall take no further action.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 10.01.	
10.02	Termination. If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated 60 days thereafter; provided, however, that if Developer files an action to challenge City's termination of this Agreement within such 60-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.02.	
10.03	Periodic Review.	See Comments/Action Items	The City has conducted its first Annual Review of the Development Agreement. As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, both parties were compliant with the DA.	

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a	Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every 12 months following the execution of this Agreement , City shall review the extend of good-faith compliance by Developer with the terms of this Agreement. This review shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code 65865.1. Developer also agrees to pay City annually the greater of \$5000 or the actual cost of Periodic Review Fee (not to exceed \$10,000). The \$5,000 shall be increased annually thereafter by the CPI for the San Francisco-Oakland Area, with the first increase implemented in January 2017 reflecting 2016 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted.	Compliant to date.		
b	Notice. At least 10 days prior to the Periodic Review, and in the manner prescribed in Article 12 of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the City Manager.	See Comments/Action Items	Notice of the Annual Review was given to the Developer on/or before January 18, 2024.	
c	Good Faith Compliance. During the Periodic Review, the City Manager shall review Developer's good faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that the Developer has not complied wit such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally Developer and City.	Compliant to date.		
d	Failure to Properly Conduct Periodic Review. If, after 30 days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.	Compliant to date.		
e	Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within 30 days, following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.	See Comments/Action Items	Written Notice of Compliance will be sent to the Developer upon conclusion of the Annual Review.	
10.04	Default by City or Developer. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023 there has been no need to exercise the provisions of Section 10.04.	

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10.05	Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay or longer, as may be mutually agreed upon in writing.	See Comments/Action Items	As of December 31, 2022, there has been no need to exercise the provisions of Section 10.05.	
10.06	Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 10.06.	
10.07	California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.	Compliant		

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10.08	Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of the process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session or 90 days of filing the written request of mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provision of this Section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses to be paid by the party against whom enforcement is ordered. Nothing in this Section shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters begin addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.	See Comments/Action Items	As of the 2023 DA review window period beginning January 1, and ending December 31, 2023, there has been no need to exercise the provisions of Section 10.08.	
10.09	Attorney's Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorney's fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.	Not Applicable		
Article XI: No Agency, Joint Venture or Partnerships				

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	It is specifically understood and agreed to by and between the parties hereto unless otherwise expressly provided herein (i) the subject development is a private development; (ii) City have no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document between City and Developer. City agrees that nothing herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer. City agrees that Developer's obligations under this Agreement related to the construction of Project water, sewer, and drainage infrastructure improvements, the grading and construction of traffic improvements and the grading and construction of any other public improvements are all public works of improvement City is requiring as a condition of regulatory approval of the Project and that the Project is otherwise private development. The City further agrees that it will contribute no more money, or the equivalent of money, to the overall Project than is required to construct the Public Improvements and that City maintain no proprietary interest in the overall Project.	Compliant to date.		
Article XII: Miscellaneous				
12.01	Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.	Not Applicable		
12.02	Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this agreement shall be enforceable by party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or an other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by the City that changes, alters, or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.	Not Applicable		
12.03	Finding. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.	Not Applicable		
12.04	Severability. If any term or provision of this Agreement or the application of any term or provision of this Agreement to a particular situation, is held by a competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination the other party.	Not Applicable		

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12.05	Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.	Not Applicable		
12.06	Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval, or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.	Not Applicable		
12.07	Other Misc Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.	Not Applicable		
12.08	Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil code 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.	Not Applicable		

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12.09	Notices. Any notice or communication required hereunder between City or Developer must be in writing and may be given either personally, by fax (with original forwarded by regular US mail), by registered or certified mail (return receipt requested), or by FedEx or or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday or Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or b) 5 days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the US mail. If given by Federal Express or a similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving 10 days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below.....	Not Applicable		
12.10.	Entire Agreement, Counterparts, and Exhibits. This Agreement is executed in two duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 29 pages and 3 exhibits which constitute in full, the final and exclusive understanding and agreement of the parties supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of any provisions of the Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes: Exhibit A - Legal Description; Exhibit A-1 - Project Site Diagram; Exhibit B - Applicable Fees; Exhibit C - Form of Affordable Housing Agreement.	Not Applicable		
12.11	Recordation of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.	See Comments/Action Items	The DA was recorded at the Contra Costa County Clerk-Recorder on July 26, 2017 (DOC 2017-0133911-00)	