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GLOSSARY

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Introduction

ABOUT THE REFERENCES CITED IN THE MODEL ADMINISTRATIVE PLAN

AUTHORITIES FOR POLICIES IN THE MODEL ADMINISTRATIVE PLAN

The authority for PHA policies is derived from many sources. Primary among these sources are federal statutes, federal regulations, and guidance issued by HUD. State law also directs PHA policy. State law must be followed where such law exists and does not conflict with federal regulations. 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. 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.

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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

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

Document and Location
Code of Federal Regulations http://www.gpoaccess.gov/cfr/index.html
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/E8-19435.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
Executive Order 11063 http://www.hud.gov/offices/fheo/FHLaws/EXO11063.cfm

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Federal Register http://www.access.gpo.gov/su_docs/aces/fr-cont.html
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 www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm
HUD-50058 Instruction Booklet http://portal.hud.gov/hudportal/documents/huddoc?id=50058i.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/huddojstatement.pdf
Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 http://www.hud.gov/offices/fheo/promotingfh/FederalRegistepublishedguidance.pdf
Notice PIH 2012-10, Verification of Social Security Numbers (SSNs) and Supplemental Security Income (SSI) Benefits; and Effective Use of the Enterprise Income Verification (EIV) System's Identity Verification Report http://portal.hud.gov/huddoc/pih2012-10.pdf
Notice PIH 2010-19, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System http://www.hud.gov/offices/pih/publications/notices/10/pih2010-19.pdf
Notice PIH 2010-26 (HA), Nondiscrimination and Accessibility Notice http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf
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

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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

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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Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

The HAP-NJ receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development. The HAP-NJ is not a federal department or agency. A public housing agency (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 HAP-NJ enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. The HAP-NJ must ensure compliance with federal laws, regulations and notices and must establish policy and procedures to clarify federal requirements and to ensure consistency in program operation.

This chapter contains information about the HAP-NJ 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 HAP-NJ, 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.

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PART I: THE HAP-NJ

1-I.A. OVERVIEW

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

1-I.B. ORGANIZATION AND STRUCTURE OF THE HAP-NJ

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the Housing Authority of Plainfield for the jurisdiction of the City of Plainfield. Throughout this Administrative Plan, the Housing Authority of Plainfield is referred to as the HAP-NJ.

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

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

The principal staff member of the HAP-NJ is the executive director (ED), hired and appointed by the board of commissioners. The executive director is directly responsible for carrying out the policies established by the board and is delegated the responsibility for hiring, training and supervising the HAP-NJ staff in order to manage the day-to-day operations of the HAP-NJ. The executive director is responsible for ensuring compliance with federal and state laws and directives for the programs managed. In addition, the executive director's duties include budgeting and financial planning for the agency.

1-I.C. HAP-NJ 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.

HAP-NJ Policy

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

1-I.D. THE HAP-NJ'S PROGRAMS

The following programs are included under this administrative plan:

HAP-NJ Policy

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The HAP-NJ's administrative plan is applicable to the operation of the Housing Choice Voucher program.

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

As a public service agency, the HAP-NJ is committed to providing excellent service to HCV program participants, owners, and to the community. The HAP-NJ'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 services needs.
- Promote fair housing and the 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 HAP-NJ'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 HAP-NJ's support systems and a high level of commitment to our employees and their development.

The HAP-NJ 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.

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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 1974 and a brief history of the program will assist the reader to better understand the program.

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

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

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

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

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

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

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

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

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be merged into a single tenant-based assistance program, now known as the Housing Choice Voucher (HCV) program.

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

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

1-II.B. HCV PROGRAM BASICS

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development. The HAP-NJ is afforded choices in the operation of the program which are included in the HAP-NJ's administrative plan, a document approved by the board of commissioners of the HAP-NJ.

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

When a family is determined to be eligible for the program and funding is available, the HAP-NJ issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, the HAP-NJ 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 HAP-NJ continues to make payments to the owner as long as the family is eligible and the housing unit continues to qualify under the program.

1-II.C. THE HCV PARTNERSHIPS

To administer the HCV program, the HAP-NJ enters into a contractual relationship with HUD (Consolidated Annual Contributions Contract). The HAP-NJ 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 HAP-NJ, the owner, and the family – have important roles to play. The roles and responsibilities of all parties are defined in federal regulations and in legal documents that parties execute to participate in the program.

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

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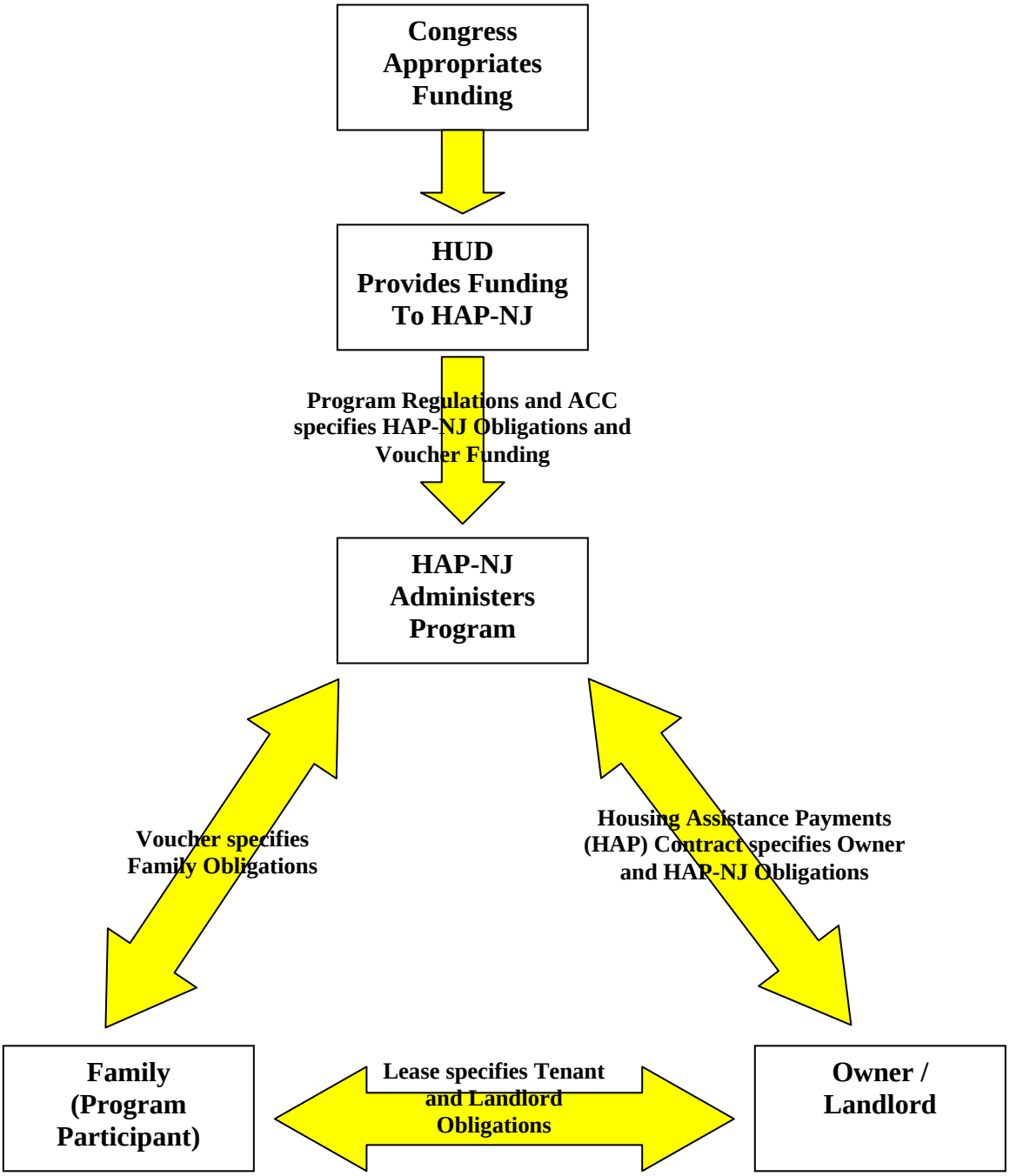
The HCV Relationships:



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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 HAP-NJ;
- Provide technical assistance to HAP-NJ on interpreting and applying HCV program requirements;
- Monitor HAP-NJ compliance with HCV program requirements and HAP-NJ performance in program administration.

What Does the HAP-NJ Do?

The HAP-NJ 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 select 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;
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, the HAP-NJ'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.
    - The HAP-NJ 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

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enjoyment of the property, compliance with essential conditions of tenancy, whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.

- Comply with the terms of the Housing Assistance Payments contract executed with the HAP-NJ;
- Comply with all applicable fair housing laws and do not discriminate against anyone;
- Maintain the housing unit in accordance with Housing Quality Standards (HQS) and make necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

What Does the Family Do?

The family has the following responsibilities:

- Provide the HAP-NJ with complete and accurate information as determined by the HAP-NJ 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 HAP-NJ;
- Allow the HAP-NJ to inspect the unit at reasonable times and after reasonable notice;
- Take responsibility for care of the housing unit, including any violations of housing quality standards caused by the family;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
- Notify the HAP-NJ 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 interest in the unit;
- Promptly notify the HAP-NJ of any changes in family composition;
- 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

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- 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

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

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

This administrative plan is set forth to define the HAP-NJ'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 HAP-NJ is responsible for complying with all changes in HUD regulations pertaining to the HCV program. If such changes conflict with this plan, HUD regulations will have precedence.

Administration of the HCV program and the functions and responsibilities of HAP-NJ staff shall be in compliance with the HAP-NJ'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 PLAN [24 CFR 982.54]

The 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 HAP-NJ waiting list, including any HAP-NJ admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the HAP-NJ waiting list (Chapter 4);
- Issuing or denying vouchers, including HAP-NJ policy governing the voucher term and any extensions or suspensions of the voucher term. 'Suspension' means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the HAP-NJ decides to allow extensions or suspensions of the voucher term, the HAP-NJ administrative plan must describe how the HAP-NJ determines whether to grant extensions or suspensions, and how the HAP-NJ determines the length of any extension or suspension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to the HAP-NJ 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);

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- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12) ;
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
- Policies concerning payment by a family to the HAP-NJ of amounts the family owes the HAP-NJ (Chapter 16);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- HAP-NJ screening of applicants for family behavior or suitability for tenancy (Chapter 3).

Mandatory vs. Discretionary Policy

HUD makes a distinction between:

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

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

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Creating policies based upon HUD guidance is not mandatory, but provides a HAP-NJ with a "safe harbor." HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If a HAP-NJ 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 HAP-NJs should carefully think through those decisions.

1-III.C. ORGANIZATION OF THE PLAN

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

1-III.D. UPDATING AND REVISING THE PLAN

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

HAP-NJ Policy

The HAP-NJ will review and update the plan at least once a year, and more often if needed, to reflect changes in regulations, HAP-NJ operations, or when needed to ensure staff consistency in operation.

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Chapter 2

FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

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

This chapter describes HUD regulations and HAP-NJ 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 HAP-NJ regarding nondiscrimination.

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

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the HAP-NJ 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.*

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PART I: NONDISCRIMINATION

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 HAP-NJ will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- Violence Against Women Reauthorization Act of 2005 (VAWA)
- 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

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.

HAP-NJ Policy

No state or local nondiscrimination laws or ordinances apply.

2-I.B. NONDISCRIMINATION

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

The HAP-NJ 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.

The HAP-NJ will not discriminate on the basis of marital status, gender identity, or sexual orientation [FR Notice 02/03/12].

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HAP-NJ Policy

The HAP-NJ does not identify any additional protected classes.

The HAP-NJ will not use any of these factors to:

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

Providing Information to Families and Owners

The HAP-NJ 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 HAP-NJ must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

Discrimination Complaints

If an applicant or participant believes that any family member has been discriminated against by the HAP-NJ or an owner, the family should advise the HAP-NJ. HUD requires the HAP-NJ 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 HAP-NJ is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

HAP-NJ Policy

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

The HAP-NJ will attempt to remedy discrimination complaints made against the HAP-NJ.

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

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

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ, 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 our programs and services, please contact the housing authority."

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

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

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

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

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

Types of Reasonable Accommodations

When needed, the HAP-NJ 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 HAP-NJ range) if the HAP-NJ determines this is necessary to enable a person with disabilities to obtain a suitable housing unit

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- 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 HAP-NJ staff

2-II.C. REQUEST FOR AN ACCOMMODATION

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the HAP-NJ 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 HAP-NJ's programs and services.

If the need for the accommodation is not readily apparent or known to the HAP-NJ, 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.

HAP-NJ Policy

The HAP-NJ will encourage the family to make its request in writing using a reasonable accommodation request form. However, the HAP-NJ will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

2-II.D. VERIFICATION OF DISABILITY

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

Before providing an accommodation, the HAP-NJ 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 HAP-NJ's programs and services.

If a person's disability is obvious or otherwise known to the HAP-NJ, 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 HAP-NJ, the HAP-NJ 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 HAP-NJ will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the

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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 HAP-NJ must request only information that is necessary to evaluate the disability-related need for the accommodation. The HAP-NJ 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 HAP-NJ does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the HAP-NJ will dispose of it. In place of the information, the HAP-NJ 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].

The HAP-NJ 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 HAP-NJ, or fundamentally alter the nature of the HAP-NJ's HCV operations (including the obligation to comply with HUD requirements and regulations).

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the overall size of the HAP-NJ'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 HAP-NJ 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 HAP-NJ may verify the need for the requested accommodation.

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HAP-NJ Policy

After a request for an accommodation is presented, the HAP-NJ will respond, in writing, within 10 business days.

If the HAP-NJ 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 HAP-NJ's operations), the HAP-NJ 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 HAP-NJ believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the HAP-NJ will notify the family, in writing, of its determination within 10 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

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

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

HAP-NJ Policy

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

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

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

2-II.G. PHYSICAL ACCESSIBILITY

The HAP-NJ 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

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- The Fair Housing Act of 1988

The HAP-NJ'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 HAP-NJ'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 HAP-NJ Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of HAP-NJ 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 HAP-NJ will include a current list of available accessible units known to the HAP-NJ and will assist the family in locating an available accessible unit, if necessary.

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

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

A HAP-NJ'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 HAP-NJ's informal review process and their right to request a hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal hearing process.

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

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

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

2-III.A. OVERVIEW

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the 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 HAP-NJ will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

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

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

2-III.B. ORAL INTERPRETATION

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

HAP-NJ Policy

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

Where feasible, the HAP-NJ 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. Where feasible and possible, the HAP-NJ will encourage the use of qualified community volunteers.

Where LEP persons desire, they will be permitted to use, at their own expense, an

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interpreter of their own choosing, in place of or as a supplement to the free language services offered by the HAP-NJ. The interpreter may be a family member or friend.

2-III.C. WRITTEN TRANSLATION

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

HAP-NJ Policy

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

The HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ's Housing Choice Voucher program and services.

HAP-NJ Policy

If it is determined that the HAP-NJ serves very few LEP persons, and the HAP-NJ has very limited resources, the HAP-NJ 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 HAP-NJ 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.

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

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

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

The phrase "physical or mental impairment" includes:

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

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

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

"Is regarded as having an impairment" is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the HAP-NJ) 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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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.

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Chapter 3

ELIGIBILITY

INTRODUCTION

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

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and HAP-NJ 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 HAP-NJ to deny assistance.

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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 part provides information that is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

3-I.B. FAMILY AND HOUSEHOLD [24 CFR 982.201(c); HUD-50058 IB, p. 13; FR Notice 02/03/12]

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

Family

To be eligible for assistance, an applicant must qualify as a family. *Family* as defined by HUD includes, but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, disabled person, near-elderly person, or any other single person; 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 the remaining member of a tenant family. The HAP-NJ has the discretion to determine if any other group of persons qualifies as a family.

Gender Identity means actual or perceived gender characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

HAP-NJ 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 HAP-NJ if the family's composition changes.

Household

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

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

Family Breakup [24 CFR 982.315]

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

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- If the family breakup results from an occurrence of domestic violence, dating violence, or stalking, the HAP-NJ must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, and stalking, see section 16-IX.D of this plan.)
- If a court determines the disposition of property between members of the assisted family in a divorce or separation decree, the HAP-NJ is bound by the court's determination of which family members continue to receive assistance.

HAP-NJ 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 HAP-NJ will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, the HAP-NJ 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, or stalking, 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.

Remaining Member of a Tenant Family [24 CFR 5.403]

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

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

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

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

HAP-NJ Policy

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

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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.

HAP-NJ Policy

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

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

HAP-NJ Policy

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

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

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

A *dependent* is a family member who is under 18 years of age or a person of 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.

Joint Custody of Dependents

HAP-NJ 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.

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

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

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

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

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

Elderly Persons

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

Near-Elderly Persons

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

Elderly Family

An *elderly family* is one in which the head, spouse, 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.

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

Persons with Disabilities

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

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.

HAP-NJ Policy

A guest can remain in the assisted unit no longer than 15 consecutive days or a total of 60 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

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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 documentation of the residence to which the guest will return.

3-I.K. FOSTER CHILDREN AND FOSTER ADULTS

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

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

Foster children and foster adults who are living with an applicant or who have been approved by the HAP-NJ 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].

HAP-NJ 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 HQS space standards according to 24 CFR 982.401.

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

3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

HAP-NJ 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.

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Absent Students

HAP-NJ 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 HAP-NJ 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.

HAP-NJ Policy

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

Absent Head, Spouse, or Cohead

HAP-NJ 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.

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

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

HAP-NJ Policy

The HAP-NJ will request 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 HAP-NJ will consider, any additional documentation or evidence.

Return of Permanently Absent Family Members

HAP-NJ Policy

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

3-I.M. LIVE-IN AIDE

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 HAP-NJ 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 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.

HAP-NJ 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 HAP-NJ 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.

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

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

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

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

The HAP-NJ 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 30 percent of the median income for the area, adjusted for family size.

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

Using Income Limits for Eligibility [24 CFR 982.201]

Income limits are used for eligibility only at admission. Income eligibility is determined by comparing the annual income of an applicant to the applicable income limit for their family size. 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]

  HAP-NJ Policy

  The HAP-NJ will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were issued a voucher by the HAP-NJ.

- 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

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

HAP-NJ Policy

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

Using Income Limits for Targeting [24 CFR 982.201]

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

Declaration [24 CFR 5.508]

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

U.S. Citizens and Nationals

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

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HAP-NJ Policy

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

Eligible Noncitizens

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

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

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

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

Mixed Families

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

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

A HAP-NJ 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 HAP-NJ 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 HAP-NJ in accordance with program requirements [24 CFR 5.512(a)].

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HAP-NJ Policy

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

When a HAP-NJ 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 HAP-NJ. The informal hearing with the HAP-NJ may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 16.

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

For new occupants joining the assisted family, the HAP-NJ 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 HAP-NJ 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.

HAP-NJ Policy

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

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. 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.

In addition, each participant who has not previously disclosed an SSN, has previously disclosed an SSN that HUD or the 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.

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

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

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

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, 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 HAP-NJ policy, the income of the student's parents will not be considered in determining the student's eligibility.

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

Definitions

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

Dependent Child

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

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Independent Student

HAP-NJ Policy

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

The individual is of legal contract age under state law.

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

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

Be at least 24 years old by December 31 of the award year for which aid is sought

Be an orphan or a ward of the court through the age of 18

Be a veteran of the U.S. Armed Forces

Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)

Be a graduate or professional student

Be married

The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.

The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

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

Institution of Higher Education

The HAP-NJ 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

HAP-NJ 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).

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Person with Disabilities

The HAP-NJ will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a *person with disabilities* (see Exhibit 3-1).

Veteran

HAP-NJ Policy

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

Determining Student Eligibility

If a student is applying for assistance on his/her own, apart from his/her parents, the HAP-NJ 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 HAP-NJ 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.

HAP-NJ Policy

For any student who is subject to the 5.612 restrictions, the HAP-NJ will:

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

Determine whether the student is independent from his/her parents in accordance with the definition of *independent student* in this section

Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program

If the HAP-NJ determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, the HAP-NJ 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

HAP-NJ 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 HAP-NJ will determine the income eligibility of the student's parents as follows:

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

If the student's parent is widowed or single, the HAP-NJ will obtain an income declaration and certification of income from that parent.

If the student's parents are divorced or separated, the HAP-NJ will obtain an income declaration and certification of income from each parent.

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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 HAP-NJ 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 HAP-NJ 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 HAP-NJ will use the income limits for the jurisdiction in which the parents live.

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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. In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for the HAP-NJ, and those in which denial of assistance is optional for the HAP-NJ.

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

Denial of assistance includes any of the following:

- Not placing the family's name on the waiting list
- Denying or withdrawing a voucher
- Not approving a request for tenancy or refusing to enter into a HAP contract
- 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 HAP-NJ'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, or stalking 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)]

HUD requires the HAP-NJ 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 HAP-NJ to admit an otherwise-eligible family if the household member has completed a HAP-NJ-

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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).

HAP-NJ Policy

The HAP-NJ will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the HAP-NJ is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the HAP-NJ, or the person who committed the crime, is no longer living in the household.

- The HAP-NJ determines that any household member is currently engaged in the use of illegal drugs.

  HAP-NJ Policy

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

- The HAP-NJ 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.

  HAP-NJ Policy

  In determining reasonable cause, the HAP-NJ will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. The HAP-NJ 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

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

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

Criminal Activity [24 CFR 982.553]

HUD permits, but does not require, the HAP-NJ to deny assistance if the HAP-NJ 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.

HAP-NJ Policy

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

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

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

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

Criminal activity that may threaten the health or safety of property owners, management staff, and persons performing contract administration functions or other responsibilities on behalf of the HAP-NJ (including a HAP-NJ employee or a HAP-NJ 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 7 years.

Any arrests for drug-related or violent criminal activity within the past 7 years.

Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 7 years.

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 HAP-NJ will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the HAP-NJ 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 HAP-NJ to deny assistance based on the family's previous behavior in assisted housing:

HAP-NJ Policy

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

The HAP-NJ **will** deny assistance to an applicant family if:

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

The family does not provide complete and true information to the HAP-NJ.

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

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

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

The family has breached the terms of a repayment agreement entered into with the HAP-NJ, 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 HAP-NJ personnel.

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

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

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

3-III.D. 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 HAP-NJ in complying with HUD requirements and HAP-NJ 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 HAP-NJ must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

HAP-NJ Policy

The HAP-NJ will perform a criminal background check through local law enforcement for every adult household member.

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)].

HAP-NJ Policy

The HAP-NJ will use the Dru Sjodin National Sex Offender database to screen applicants for admission.

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

Screening for Suitability as a Tenant [24 CFR 982.307]

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

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ 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 HAP-NJ to provide prospective owners with the family's current and prior address (as shown in HAP-NJ records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits the HAP-NJ 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 HAP-NJ may not disclose to the owner any confidential information provided to the HAP-NJ by the family in response to a HAP-NJ request for documentation of domestic violence, dating violence, or stalking except at the written request or with the written consent of the individual providing the documentation
[24 CFR 5.2007(a)(4)].

HAP-NJ Policy

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

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3-III.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE

Evidence [24 CFR 982.553(c)]

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ 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).

HAP-NJ Policy

The HAP-NJ will consider the following factors prior to making its decision:

The seriousness of the case, especially with respect to how it would affect other residents

The effects that denial of assistance may have on other members of the family who were not involved in the action or failure

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.G) a victim of domestic violence, dating violence, or stalking

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future

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

The HAP-NJ 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

Should the HAP-NJ's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, the HAP-NJ 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 HAP-NJ must deny admission to the family [Notice PIH 2012-28].

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

HAP-NJ 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.

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

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

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

HAP-NJ 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 HAP-NJ will determine whether the behavior is related to the stated disability. If so, upon the family's request, the HAP-NJ will determine whether admitting the family as a reasonable accommodation is appropriate. The HAP-NJ will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

3-III.F. NOTICE OF ELIGIBILITY OR DENIAL

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

If the HAP-NJ 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.

HAP-NJ Policy

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

If a HAP-NJ 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 HAP-NJ 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 HAP-NJ 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)].

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HAP-NJ Policy

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible the HAP-NJ 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 HAP-NJ to dispute the information within that 10-day period, the HAP-NJ 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. The family must request an informal review within 10 business days of the official denial letter.

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

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, or stalking are contained in Section 3-III.G.

3-III.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING

The Violence against Women Act of 2005 (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 that the applicant is or has been a victim of domestic violence, dating violence, or stalking, if the applicant otherwise qualifies for assistance or admission."

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

HAP-NJ Policy

The HAP-NJ acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the HAP-NJ's policies. Therefore, if the HAP-NJ makes a determination to deny assistance to an applicant family, the HAP-NJ will include in its notice of denial the VAWA information described in section 16-IX.C of this plan and will request that an applicant wishing to claim protection under VAWA notify the HAP-NJ within 10 business days.

Documentation

Victim Documentation [24 CFR 5.2007]

HAP-NJ Policy

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

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Perpetrator Documentation

HAP-NJ 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]

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.

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

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

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

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

Individual with Handicaps [24 CFR 8.3]

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such 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* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

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

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

(a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

(b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

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(c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

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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 preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' also includes—

(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and

(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

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

(a) Definition of institution of higher education for purposes of student assistance programs

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(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, 1992; or

(ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution’s students complete their clinical training at an approved veterinary school located in the United States.

(B) Advisory panel

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(i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

(I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and

(II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

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

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

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

(A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;

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

(C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

(D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the

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limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

(A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

(B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

(1) Principal criteria. For the purpose of this section, the term ''proprietary institution of higher education'' means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;

(C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;

(D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;

(E) Has been in existence for at least 2 years; and

(F) Has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of

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chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

(2) Additional institutions. The term ‘‘proprietary institution of higher education’’ also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

(1) Principal criteria. For the purpose of this section, the term ‘‘postsecondary vocational institution’’ means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and

(C) Has been in existence for at least 2 years.

(2) Additional institutions. The term ‘‘postsecondary vocational institution’’ also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

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

The HAP-NJ 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 HAP-NJ that justify their selection. Examples of this are the selection of families for income targeting and the selection of families that qualify for targeted funding.

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

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

> Part I: The Application Process. This part provides an overview of the application process, and discusses how applicants can obtain and submit applications. It also specifies how the HAP-NJ will handle the applications it receives.
>
> Part II: Managing the Waiting List. This part presents the policies that govern how the HAP-NJ'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 HAP-NJ will use to keep the waiting list current.
>
> Part III: Selection for HCV Assistance. This part describes the policies that guide the HAP-NJ in selecting families for HCV assistance as such assistance becomes available. It also specifies how in-person interviews will be used to ensure that the HAP-NJ has the information needed to make a final eligibility determination.

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PART I: THE APPLICATION PROCESS

4-I.A. OVERVIEW

This part describes the HAP-NJ policies for making applications available, accepting applications making preliminary determinations of eligibility, and the placement of applicants on the waiting list. This part also describes the HAP-NJ's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with limited English proficiency (LEP).

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

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits the HAP-NJ 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 HAP-NJ. The HAP-NJ must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the HAP-NJ's application.

HAP-NJ Policy

Depending upon the length of time that applicants may need to wait to receive assistance, the HAP-NJ may use a one- or two-step application process.

A one-step process will be used when it is expected that a family will be selected from the waiting list within 60 days of the date of application. At application, the family must provide all of the information necessary to establish family eligibility and level of assistance.

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

When the waiting list is open, families may apply online on the HAP-NJ website. Applications must be complete in order to be accepted by the HAP-NJ for processing. If an application is incomplete, the HAP-NJ will notify the family of the additional information required.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

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

The HAP-NJ must take steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard HAP-NJ application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). The HAP-NJ 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 HAP-NJ must provide an alternate approach that provides full

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access to the application process. Chapter 2 provides a full discussion of the HAP-NJ's 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 HAP-NJ's policies related to ensuring access to people with limited English proficiency (LEP).

4-I.D. PLACEMENT ON THE WAITING LIST

The HAP-NJ must review each complete application received and make a preliminary assessment of the family's eligibility. The HAP-NJ 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 HAP-NJ 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

HAP-NJ Policy

If the HAP-NJ 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 HAP-NJ 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

HAP-NJ Policy

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

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

Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and their waiting list/lottery number.

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PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

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

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

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

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

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

HUD requires the HAP-NJ 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.

HAP-NJ Policy

The HAP-NJ will maintain a single waiting list for the HCV tenant-based program and a separate waiting list for the Project-Based voucher program.

HUD directs that a family that applies for assistance from the HCV program must be offered the opportunity to be placed on the waiting list for any public housing, project-based voucher or moderate rehabilitation program the HAP-NJ operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs.

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

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

HAP-NJ Policy

The HAP-NJ will not merge the HCV waiting list with the waiting list for any other program the HAP-NJ operates.

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

Closing the Waiting List

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

HAP-NJ Policy

The HAP-NJ will close the waiting list when the estimated waiting period for housing assistance for applicants on the list reaches 24 months for the most current applicants. Where the HAP-NJ has particular preferences or funding criteria that require a specific category of family, the HAP-NJ may elect to continue to accept applications from these applicants while closing the waiting list to others.

Reopening the Waiting List

If the waiting list has been closed, it cannot be reopened until the HAP-NJ 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.

HAP-NJ Policy

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

Courier News, Star Ledger and the HAP-NJ website

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

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

Because HUD requires the HAP-NJ to admit a specified percentage of extremely low income families to the program (see Chapter 4, Part III), the HAP-NJ 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].

HAP-NJ 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

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HAP-NJ 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

HAP-NJ Policy

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

4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

HAP-NJ Policy

While the family is on the waiting list, the family must immediately inform the HAP-NJ of changes in contact information, including current residence, mailing address, and phone number as well as a change in preference status. The changes must be submitted in writing.

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

HUD requires the HAP-NJ to establish policies to use when removing applicant names from the waiting list.

Purging the Waiting List

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

HAP-NJ Policy

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

To update the waiting list, the HAP-NJ 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 HAP-NJ 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.

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

If the family fails to respond within 15 business 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 15 business days to respond from the date the letter was re-sent.

If a family is removed from the waiting list for failure to respond, the HAP-NJ may reinstate the family if it is determined that the lack of response was due to HAP-NJ error, or to circumstances beyond the family's control.

Removal from the Waiting List

HAP-NJ Policy

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

If a family is removed from the waiting list because the HAP-NJ has determined the family is not eligible for assistance, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding the HAP-NJ's decision (see Chapter 16) [24 CFR 982.201(f)].

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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 part.

The order in which families are selected from the waiting list depends on the selection method chosen by the HAP-NJ 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 HAP-NJ must maintain a clear record of all information required to verify that the family is selected from the waiting list according to the HAP-NJ'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 HAP-NJ 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 HAP-NJ must maintain records showing that such families were admitted with special program funding.

Targeted Funding [24 CFR 982.204(e)]

HUD may award a HAP-NJ funding for a specified category of families on the waiting list. The HAP-NJ must use this funding only to assist the families within the specified category. In order to assist families within a targeted funding category, the HAP-NJ 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.

Regular HCV Funding

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

4-III.C. SELECTION METHOD

PHAs must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the HAP-NJ 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 HAP-NJ to establish other local preferences, at its discretion. Any local preferences established must be consistent with the HAP-NJ plan and the consolidated

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plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources.

HAP-NJ Policy

The HAP-NJ offers the following preferences:

Preference	Points
Families that reside in Plainfield, including families who work or who have been notified to work in Plainfield.	1
Families with dependents	1
Families with a member who is disabled	2
Families with a member who is a disabled veteran	1
Families with a member who is a veteran	1
Families with a member who is aged 62 years of age or older	1

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

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during the HAP-NJ's fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, a HAP-NJ 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)].

HAP-NJ Policy

The HAP-NJ 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.

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Order of Selection

The HAP-NJ system of preferences may select families based on local preferences according to the date and time of application or by a random selection process (lottery) [24 CFR 982.207(c)]. If a HAP-NJ 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)].

HAP-NJ Policy

Families will be selected from the waiting list based on the selection preference(s) for which they qualify, and in accordance with the HAP-NJ's hierarchy of preferences, if applicable. Within each preference category, families will be selected based on their waiting list/lottery number.

4-III.D. NOTIFICATION OF SELECTION

When a family has been selected from the waiting list, the HAP-NJ must notify the family.

HAP-NJ Policy

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

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

Who is required to attend the interview

All documents that must be provided at the interview, including information about what constitutes acceptable documentation

If a notification letter is returned to the HAP-NJ 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 HAP-NJ obtain the information and documentation needed to make an eligibility determination though a face-to-face interview with a HAP-NJ 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 HAP-NJ 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 HAP-NJ [Notice PIH 2012-10].

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

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HAP-NJ Policy

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

The head of household and all adults ages 18 and older will be strongly encouraged to attend the interview together. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to the HAP-NJ.

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 HAP-NJ will allow the family to retain its place on the waiting list for 10 business days. If not all household members have disclosed their SSNs at the next time the HAP-NJ is issuing vouchers, the HAP-NJ 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 documentation. If any materials are missing, the HAP-NJ 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 limited English proficient (LEP) applicants, the HAP-NJ will provide translation services in accordance with the HAP-NJ's LEP plan.

If the family is unable to attend a scheduled interview, the family should contact the HAP-NJ in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, the HAP-NJ will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without HAP-NJ 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 HAP-NJ must verify all information provided by the family (see Chapter 7). Based on verified information, the HAP-NJ must make a final determination of eligibility (see Chapter 3)

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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.

HAP-NJ Policy

If the HAP-NJ determines that the family is ineligible, the HAP-NJ 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. preference, extremely low-income), the family will be returned to its original position on the waiting list. The HAP-NJ will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

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

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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 HAP-NJ 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 HAP-NJ issues the family a voucher. The voucher includes the unit size for which the family qualifies based on the HAP-NJ'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 HAP-NJ 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 HAP-NJ'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.

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PART I: BRIEFINGS AND FAMILY OBLIGATIONS

5-I.A. OVERVIEW

HUD regulations require the HAP-NJ 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 HAP-NJ'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 HAP-NJ 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 HAP-NJ must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973), and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

HAP-NJ Policy

Briefings will be conducted in group meetings.

Generally, the head of household and all adults are required to attend the briefing. On a case-by-case basis, the HAP-NJ may allow adult members to miss the briefing.

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

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

Notification and Attendance

HAP-NJ 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 for good cause. Applicants who fail to attend a scheduled briefing, without prior HAP-NJ approval, will be denied assistance (see Chapter 3).

Oral Briefing [24 CFR 982.301(a)]

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;

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- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside the HAP-NJ's jurisdiction;
- For families eligible under portability, an explanation of portability. The HAP-NJ cannot discourage eligible families from moving under portability; and
- For families living in high-poverty census tracts, an explanation of the advantages of moving to areas outside of high-poverty concentrations.

Briefing Packet [24 CFR 982.301(b)]

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

- The term of the voucher, and the HAP-NJ's policies on any extensions or suspensions of the term. If the HAP-NJ 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 HAP-NJ determines the payment standard for a family, how the HAP-NJ determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how the HAP-NJ determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit. For a family that qualifies to lease a unit outside the HAP-NJ jurisdiction under portability procedures, the information must include an explanation of how portability works.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy**,** and a description of the procedure for requesting approval for a tenancy.
- A statement of the HAP-NJ policy on providing information about families to prospective owners.
- The HAP-NJ subsidy standards including when and how exceptions are made.
- The HUD brochure on how to select a unit.
- The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home.*
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.
- A list of landlords or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the HAP-NJ.
- The family obligations under the program

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- The grounds on which the HAP-NJ may terminate assistance for a participant family because of family action or failure to act.
- HAP-NJ informal hearing procedures including when the HAP-NJ is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.

If the HAP-NJ 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 PHAs with names, addresses, and telephone numbers

Additional Items to Be Included in the Briefing Packet

In addition to items required by the regulations, PHAs may wish to include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7, Notice PIH 2010-19].

HAP-NJ Policy

The HAP-NJ will provide the following additional materials in the briefing packet:

Information on how to fill out and file a housing discrimination complaint form

Information about the protections afforded by the Violence against Women Act of 2005 (VAWA) to victims of domestic violence, dating violence, 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

"What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19 (**http://portal.hud.gov/hudportal/documents/huddoc?id=10-19pihn1.pdf**)

5-I.C. FAMILY OBLIGATIONS

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

HAP-NJ Policy

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

When a family is required to provide notice to the HAP-NJ, the notice must be in writing.

Family Obligations [24 CFR 982.551]

The family obligations of the voucher are listed as follow:

- The family must supply any information that the HAP-NJ 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 HAP-NJ or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

  HAP-NJ Policy

  Damages beyond normal wear and tear will be considered to be damages which could be assessed against the security deposit.

- The family must allow the HAP-NJ 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.

  HAP-NJ Policy

  The HAP-NJ 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, or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

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

  HAP-NJ Policy

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

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

  HAP-NJ Policy

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

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

  HAP-NJ 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 HAP-NJ 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 HAP-NJ when the family is absent from the unit.

  HAP-NJ 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 HAP-NJ 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].

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- 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ 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]

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PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE

5-II.A. OVERVIEW

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

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

For each family, the HAP-NJ determines the appropriate number of bedrooms under the HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ subsidy standards.

HAP-NJ Policy

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

Generally, a child under age 5 will not be allocated a separate bedroom.

Persons of the opposite sex (other than spouses) will be allocated separate bedrooms.

Live-in aides will be allocated a separate bedroom.

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Single person families will be allocated one bedroom.

The HAP-NJ will reference the following chart in determining the appropriate voucher size for a family:

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

5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

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

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

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

HAP-NJ Policy

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

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

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, the HAP-NJ issues a Housing

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

A voucher can be issued to an applicant family only after the HAP-NJ 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].

HAP-NJ Policy

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

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

HAP-NJ Policy

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

If the HAP-NJ determines that there is insufficient funding after a voucher has been issued, the HAP-NJ may rescind the voucher and place the affected family back on the waiting list.

5-II.E. VOUCHER TERM, EXTENSIONS, AND SUSPENSIONS

Voucher Term [24 CFR 982.303]

The initial term of a voucher must be at least 60 calendar days. The initial term must be stated on the voucher [24 CFR 982.303(a)].

HAP-NJ Policy

The initial voucher term will be 60 calendar days.

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

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

The HAP-NJ 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 HAP-NJ can approve. Discretionary policies

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related to extension and expiration of search time must be described in the HAP-NJ'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 HAP-NJ's decision to approve or deny an extension. The HAP-NJ'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)].

HAP-NJ Policy

The HAP-NJ will automatically approve one 30-day extension upon written request from the family.

The HAP-NJ 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 HAP-NJ. Following is a list of extenuating circumstances that the HAP-NJ 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 HAP-NJ

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 HAP-NJ may require the family to provide documentation to support the request or obtain verification from a qualified third party.

All requests for extensions to the voucher term must be made in writing and submitted to the HAP-NJ prior to the expiration date of the voucher (or extended term of the voucher).

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

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

At its discretion, a HAP-NJ may adopt a policy to suspend the housing choice voucher term if the family has submitted a Request for Tenancy Approval (RTA) during the voucher term. "Suspension" means stopping the clock on a family's voucher term from the time a family submits the RTA until the time the HAP-NJ approves or denies the request [24 CFR 982.4]. The HAP-NJ's determination not to suspend a voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

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HAP-NJ Policy

When a Request for Tenancy Approval and proposed lease is received by the HAP-NJ, the term of the voucher will be suspended while the HAP-NJ processes the request.

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 HAP-NJ 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].

HAP-NJ Policy

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

Within 10 business days after the expiration of the voucher term or any extension, the HAP-NJ 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.

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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 HAP-NJ's subsidy. The HAP-NJ 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 HAP-NJ policies related to these topics in three parts as follows:

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

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PART I: ANNUAL INCOME

6-I.A. OVERVIEW

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

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

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

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

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

6-I.B. HOUSEHOLD COMPOSITION AND INCOME

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

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

Temporarily Absent Family Members

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

HAP-NJ 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

HAP-NJ 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 HAP-NJ 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

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

HAP-NJ Policy

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

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Absent Head, Spouse, or Cohead

HAP-NJ 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.

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].

HAP-NJ Policy

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

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

HAP-NJ 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.

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

Caretakers for a Child

HAP-NJ Policy

The approval of a caretaker is at the owner and HAP-NJ's discretion and subject to the owner and HAP-NJ's screening criteria. If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the HAP-NJ 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.

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(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 HAP-NJ will extend the caretaker's status as an eligible visitor.

(3) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker, as long as the caretaker meets HAP-NJ eligibility criteria.

(4) During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

6-I.C. ANTICIPATING ANNUAL INCOME

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

Basis of Annual Income Projection

The HAP-NJ generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes the HAP-NJ 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 HAP-NJ 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 HAP-NJ does not determine it is necessary to obtain additional third-party data.

HAP-NJ Policy

When EIV is obtained and the family does not dispute the EIV employer data, the HAP-NJ will use current tenant-provided documents to project annual income. When the tenant-provided documents are pay stubs, the HAP-NJ will make every effort to obtain current and consecutive pay stubs dated within the last 60 days.

The HAP-NJ 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,

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If the family disputes the accuracy of the EIV employer data, and/or

If the HAP-NJ determines additional information is needed.

In such cases, the HAP-NJ 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 HAP-NJ annualized projected income.

When the HAP-NJ cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the HAP-NJ 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 HAP-NJ to show why the historic pattern does not represent the family's anticipated income.

Known Changes in Income

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

Example: An employer reports that a full-time employee who has been receiving $8/hour will begin to receive $8.25/hour in the eighth week after the effective date of the reexamination. In such a case the HAP-NJ would calculate annual income as follows: ($8/hour × 40 hours × 7 weeks) + ($8.25 × 40 hours × 45 weeks).

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

When tenant-provided third-party documents are used to anticipate annual income, they will be dated within the last 60 days of the request.

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.

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6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income

Wages and Related Compensation

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

HAP-NJ Policy

For persons who regularly receive bonuses or commissions, the HAP-NJ will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the HAP-NJ will use the prior year amounts. In either case the family may provide, and the HAP-NJ 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 HAP-NJ will count only the amount estimated by the employer. The file will be documented appropriately.

Some Types of Military Pay

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

Types of Earned Income Not Counted in Annual Income

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

This type of income (including gifts) is not included in annual income. Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting no longer than 180 days [Notice PIH 2009-19].

HAP-NJ 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 of 18 years is not included in annual income [24 CFR 5.609(c)(1)]. (See Eligibility chapter for a definition of *foster children*.)

Certain Earned Income of Full-Time Students

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

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Income of a Live-in Aide

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

Income Earned under Certain Federal Programs

Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- 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 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

Resident Service Stipend

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed $200 per individual per month) received by a resident for performing a service for the HAP-NJ 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 HAP-NJ'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)].

HAP-NJ Policy

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

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The HAP-NJ 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 HAP-NJ 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 HAP-NJ's interim reporting requirements.

HUD-Funded Training Programs

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

HAP-NJ Policy

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

Earned Income Tax Credit

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

Earned Income Disallowance

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

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

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

Eligibility

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

- Employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.

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

Calculation of the Disallowance

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

HAP-NJ Policy

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

The family member's prior, or prequalifying, income remains constant (as a baseline) throughout the period that he or she is participating in the EID.

Initial 12-Month Exclusion

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

HAP-NJ 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 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.

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HAP-NJ Policy

During the 48-month eligibility period, the HAP-NJ 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).

6-I.F. BUSINESS INCOME [24 CFR 5.609(b)(2)]

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

Business Expenses

Net income is "gross income less business expense" [HCV GB, p. 5-19].

HAP-NJ Policy

To determine business expenses that may be deducted from gross income, the HAP-NJ will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

Business Expansion

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

HAP-NJ Policy

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

Capital Indebtedness

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

HAP-NJ 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 HAP-NJ 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.

Withdrawal of Cash or Assets from a Business

HUD regulations require the HAP-NJ 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.

HAP-NJ 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 HAP-NJ will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

Co-owned Businesses

HAP-NJ Policy

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

6-I.G. ASSETS [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]

Overview

There is no asset limitation for participation in the HCV program. However, HUD requires that the HAP-NJ 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 HAP-NJ must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

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

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)], and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and HAP-NJ policies related to each type of asset.

General Policies

Income from Assets

The HAP-NJ 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 HAP-NJ to use other than current circumstances to anticipate income when (1) an imminent

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change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) the HAP-NJ 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 HAP-NJ can take into consideration past rental income along with the prospects of obtaining a new tenant.

HAP-NJ 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 HAP-NJ to show why the asset income determination does not represent the family's anticipated asset income.

Valuing Assets

The calculation of asset income sometimes requires the HAP-NJ 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.

HAP-NJ Policy

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28].

Lump-Sum Receipts

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

Imputing Income from Assets [24 CFR 5.609(b)(3), Notice PIH 2012-29]

When net family assets are $5,000 or less, the HAP-NJ 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 HAP-NJ 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 HAP-NJ.

- Note: The HUD field office no longer provides an interest rate for imputed asset income. The "safe harbor" is now for the HAP-NJ to establish a passbook rate within 0.75 percent of a national average.
- The HAP-NJ must review its passbook rate annually to ensure that it remains within 0.75 percent of the national average.

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HAP-NJ Policy

The HAP-NJ will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC).

The HAP-NJ will review the passbook rate annually, in December of each year. The rate will not be adjusted unless the current HAP-NJ 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 1 following the December review.

Determining Actual Anticipated Income from Assets

It may or may not be necessary for the HAP-NJ 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 payments equal to the amount the family member deposited into the retirement investment plan.

Jointly Owned Assets

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

HAP-NJ Policy

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

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, the HAP-NJ will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the HAP-NJ 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 HAP-NJ 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.

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Minimum Threshold

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

HAP-NJ Policy

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

When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual 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.

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.

HAP-NJ Policy

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

Foreclosure or Bankruptcy

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

Family Declaration

HAP-NJ 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 HAP-NJ may verify the value of the assets disposed of if other information available to the HAP-NJ does not appear to agree with the information reported by the family.

Types of Assets

Checking and Savings Accounts

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

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HAP-NJ Policy

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

In determining the value of a savings account, the HAP-NJ will use the current balance.

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

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

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

HAP-NJ Policy

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

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

HAP-NJ Policy

In determining the equity, the HAP-NJ 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.

The HAP-NJ 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 HAP-NJ 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 CFR5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b), Notice PIH 2012-3]

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- 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 HAP-NJ 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].

HAP-NJ Policy

For the purposes of calculating expenses to convert to cash for real property, the HAP-NJ 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.

HAP-NJ 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 HAP-NJ 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.

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Nonrevocable Trusts

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

Retirement Accounts

Company Retirement/Pension Accounts

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

HAP-NJ Policy

In determining the value of personal property held as an investment, the HAP-NJ will use the family's estimate of the value. The HAP-NJ 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)].

HAP-NJ 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.

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Life Insurance

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

6-I.H. PERIODIC PAYMENTS

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

Periodic Payments Included in Annual Income

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

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

Most lump-sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)]. 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 [FR Notice 11/24/08].

HAP-NJ Policy

When a delayed-start payment is received and reported during the period in which the HAP-NJ is processing an annual reexamination, the HAP-NJ will adjust the family share and HAP-NJ 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 HAP-NJ.

Treatment of Overpayment Deductions from Social Security Benefits

The HAP-NJ 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 HAP-NJ 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

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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].

HAP-NJ Policy

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

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)].
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)].
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)].
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. *Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump-sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b)(4)].
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [FR Notice 11/24/08].

6-I.I. PAYMENTS IN LIEU OF EARNINGS

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

6-I.J. WELFARE ASSISTANCE

Overview

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

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

The HAP-NJ 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

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provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

Covered Families

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

Imputed Income

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, the HAP-NJ must include in annual income "imputed" welfare income. The HAP-NJ 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)].

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 HAP-NJ must count alimony or child support amounts awarded as part of a divorce or separation agreement.

HAP-NJ Policy

The HAP-NJ will count court-awarded amounts for alimony and child support unless the HAP-NJ 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 HAP-NJ 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)].

HAP-NJ 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 HAP-NJ. For contributions that may vary from month to month (e.g., utility payments), the HAP-NJ will include an average amount based upon past history.

6-I.L. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9) and FR 12/14/12]

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

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

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

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

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

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

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

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- *Tuition* will have the meaning given this term by the institution of higher education in which the student is enrolled and will include any other fees and charges required by the institution for enrollment [FR 12/14/12, p. 74497].

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

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

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

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 CFR 5.609(c) and updated by FR Notice 12/14/12 that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of $480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17), FR Notice 12/14/12]. HUD publishes an updated list of these exclusions periodically. It includes:
  (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
  (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC

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(c) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (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 submarginal 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 1998 (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 1990 (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*

(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 1985 (42 U.S.C. 3056(f))

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

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

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

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

(s) 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)

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

(u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, 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 See Section 6-I.L. for exceptions.)

(v) 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)

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PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Overview

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

> 5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity [HAP-NJ] must deduct the following amounts from annual income:
>
> (1) $480 for each dependent;
>
> (2) $400 for any elderly family or disabled family;
>
> (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
>
> (i) Unreimbursed medical expenses of any elderly family or disabled family;
>
> (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
>
> (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

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

Anticipating Expenses

HAP-NJ Policy

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

If a family has an accumulated debt for medical or disability assistance expenses, the HAP-NJ 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 HAP-NJ may require the family to provide documentation of payments made in the preceding year.

6-II.B. DEPENDENT DEDUCTION

An allowance of $480 is deducted from annual income for each dependent [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time

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student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

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

6-II.D. MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent of annual income. The medical expense deduction is permitted only for families in which the head, spouse, or cohead is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

Definition of *Medical Expenses*

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

HAP-NJ 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, noncosmetic	Psychiatric treatment
Services of medical facilities	Ambulance services and some costs of transportation related to medical expenses
Hospitalization, long-term care, and in-home nursing services	The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
Prescription medicines and insulin, but not 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 Medical and Disability Assistance Expenses

HAP-NJ 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 medical or disability assistance expenses, the HAP-NJ will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

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

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

Earned Income Limit on the Disability Assistance Expense Deduction

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

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

HAP-NJ 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 HAP-NJ will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

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

Eligible Disability Expenses

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

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

Eligible Auxiliary Apparatus

HAP-NJ Policy

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

Eligible Attendant Care

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

HAP-NJ Policy

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

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

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

Payments to Family Members

No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

Necessary and Reasonable Expenses

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

HAP-NJ Policy

The HAP-NJ determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the HAP-NJ will collect information from organizations that provide services and support to persons with

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disabilities. A family may present, and the HAP-NJ will consider, the family's justification for costs that exceed typical costs in the area.

Families That Qualify for Both Medical and Disability Assistance Expenses

HAP-NJ Policy

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

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

6-II.F. CHILD CARE EXPENSE DEDUCTION

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

Clarifying the Meaning of *Child* for This Deduction

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

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

HAP-NJ Policy

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

In evaluating the family's request, the HAP-NJ 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

HAP-NJ Policy

If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the

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family member's job search efforts are not commensurate with the child care expense being allowed by the HAP-NJ.

Furthering Education

HAP-NJ Policy

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

Being Gainfully Employed

HAP-NJ Policy

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

Earned Income Limit on Child Care Expense Deduction

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

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

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

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

HAP-NJ Policy

When the child care expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, the HAP-NJ generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

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Eligible Child Care Expenses

The type of care to be provided is determined by the assisted family. The HAP-NJ may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

Allowable Child Care Activities

HAP-NJ Policy

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

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

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

Necessary and Reasonable Costs

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

HAP-NJ Policy

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

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

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PART III: CALCULATING FAMILY SHARE AND HAP-NJ SUBSIDY

6-III.A. OVERVIEW OF RENT AND SUBSIDY CALCULATIONS

TTP Formula [24 CFR 5.628]

HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between $0 and $50 that is established by the HAP-NJ

The HAP-NJ 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]

HAP-NJ Policy

Welfare rent does not apply in this locality.

Minimum Rent [24 CFR 5.630]

HAP-NJ Policy

The minimum rent for this locality is $50.

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

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the HAP-NJ's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the HAP-NJ may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.)

HAP-NJ Subsidy [24 CFR 982.505(b)]

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

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Utility Reimbursement [24 CFR 982.514(b)]

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

HAP-NJ Policy

The HAP-NJ will make utility reimbursements to the family.

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

Overview

If the HAP-NJ establishes a minimum rent greater than zero, the HAP-NJ 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 HAP-NJ 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.

HAP-NJ 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.

HAP-NJ 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.

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HAP-NJ 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 HAP-NJ.

HAP-NJ Policy

The HAP-NJ has not established any additional hardship criteria.

Implementation of Hardship Exemption

Determination of Hardship

When a family requests a financial hardship exemption, the HAP-NJ must suspend the minimum rent requirement beginning the first of the month following the family's request.

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

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ has established a minimum rent of $35.	
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
$35 Minimum rent	$35 Minimum rent
Minimum rent applies. TTP = $35	Hardship exemption granted. TTP = $15

HAP-NJ 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 HAP-NJ will make the determination of hardship within 30 calendar days.

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No Financial Hardship

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

HAP-NJ Policy

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

Temporary Hardship

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

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

HAP-NJ Policy

The HAP-NJ will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

Long-Term Hardship

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

HAP-NJ 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.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505]

Overview

The HAP-NJ's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the HAP-NJ's payment standards. The establishment and revision of the HAP-NJ's payment standard schedule are covered in Chapter 16.

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

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the HAP-NJ'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 HAP-NJ has established an exception payment standard for a designated part of an FMR area and a family's unit is located in the exception area, the HAP-NJ must use the appropriate payment standard for the exception area.

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

Decreases

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

Step 1: At the first regular reexamination following the decrease in the payment standard, the HAP-NJ will determine the payment standard for the family using the lower of the payment standard for the family unit size or the size of the dwelling unit rented by the family.

Step 2: The HAP-NJ will compare the payment standard from step 1 to the payment standard last used to calculate the monthly housing assistance payment for the family. The payment standard used by the HAP-NJ at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. The HAP-NJ will advise the family that the application of the lower payment standard will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard.

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Step 3: At the second regular reexamination following the decrease in the payment standard, the lower payment standard will be used to calculate the monthly housing assistance payment for the family unless the HAP-NJ has subsequently increased the payment standard, in which case the payment standard will be determined in accordance with procedures for increases in payment standards described below.

Increases

If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for the family beginning on the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard.

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next annual reexamination [HCV GB, p. 7-8].

Changes in Family Unit Size

Irrespective of any increase or decrease in the payment standard, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard for the family beginning at the family's first regular reexamination following the change in family unit size.

Reasonable Accommodation

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the HAP-NJ is allowed to establish a higher payment standard for the family within the basic range.

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

Overview

A HAP-NJ-established utility allowance schedule is used in determining family share and HAP-NJ subsidy. The HAP-NJ must use the appropriate utility allowance for the size of dwelling unit actually leased by a family rather than the voucher unit size for which the family qualifies using HAP-NJ subsidy standards. See Chapter 5 for information on the HAP-NJ's subsidy standards.

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

Reasonable Accommodation

HCV program regulations require a HAP-NJ to approve a utility allowance amount higher than shown on the HAP-NJ's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the HAP-NJ will approve an allowance for air-conditioning, even if the HAP-NJ has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance and provide the HAP-NJ with an explanation of the need for the reasonable accommodation and information about the amount of additional allowance required [HCV GB, p. 18-8].

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Utility Allowance Revisions

At reexamination, the HAP-NJ must use the HAP-NJ current utility allowance schedule [24 CFR 982.517(d)(2)].

HAP-NJ Policy

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination that is effective after the allowance is adopted.

6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520]

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The HAP-NJ must prorate the assistance provided to a mixed family. The HAP-NJ 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 HAP-NJ subsidy for a family is calculated at $500 and two of four family members are ineligible, the HAP-NJ subsidy would be reduced to $250.

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EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

24 CFR 5.609

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

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

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

(3) Which are not specifically excluded in paragraph (c) of this section.

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

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

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

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

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

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

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

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(6) Welfare assistance payments.

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

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

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

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

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

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

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

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

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

HHS DEFINITION OF "ASSISTANCE"

45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

260.31 What does the term "assistance" mean?

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

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

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

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

[1] Text of 45 CFR 260.31 follows.

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

(b) [The definition of "assistance"] excludes: (1) Nonrecurrent, short-term benefits that:

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

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

(iii) Will not extend beyond four months.

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

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

(4) Refundable earned income tax credits;

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

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

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

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EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

24 CFR 5.609

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

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

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

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

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

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

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

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

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

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the HAP-NJ 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 HAP-NJ's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

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(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See Section 6-I.M. for a list of benefits that qualify for this exclusion.]

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EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

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

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

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

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

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EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

24 CFR 5.617 Self-sufficiency incentives for persons with disabilities–Disallowance of increase in annual income.

(a) *Applicable programs.* The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) *Definitions.* The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least $500.

(c) *Disallowance of increase in annual income—*

(1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

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(2) Second twelve month exclusion and PHAse-in. During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Maximum four year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) *Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

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EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615

Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) *Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) *Definitions.* The following definitions apply for purposes of this section:

Covered families. Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at Sec. 5.603.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) *Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the HAP-NJ 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 HAP-NJ, the welfare agency will inform the HAP-NJ 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 HAP-NJ of any subsequent changes in the term or amount of such specified welfare benefit reduction. The HAP-NJ 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 HAP-NJ'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 HAP-NJ by the welfare agency).

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(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 HAP-NJ 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 HAP-NJ decision.*

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

(e) *HAP-NJ relation with welfare agency.*

(1) The HAP-NJ must ask welfare agencies to inform the HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ. However, the HAP-NJ 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 HAP-NJ shall be entitled to rely on the welfare agency notice to the HAP-NJ of the welfare agency's

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determination of a specified welfare benefits reduction.

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Chapter 7

VERIFICATION

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, Notice PIH 2010-19]

INTRODUCTION

The HAP-NJ 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 HAP-NJ must not pass on the cost of verification to the family.

The HAP-NJ will follow the verification guidance provided by HUD in Notice PIH 2010-19 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary HAP-NJ policies.

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 HAP-NJ.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516 AND 982.551, 24 CFR 5.230]

The family must supply any information that the HAP-NJ or HUD determines is necessary to the administration of the program and must consent to HAP-NJ verification of that information [24 CFR 982.551].

Consent Forms

It is required that all adult applicants and participants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the HAP-NJ may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

Penalties for Failing to Consent [24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, the HAP-NJ will deny admission to applicants and terminate assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with HAP-NJ procedures.

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7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy [Notice PIH 2010-19]

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 HAP-NJ to use the most reliable form of verification that is available and to document the reasons when the HAP-NJ uses a lesser form of verification.

HAP-NJ Policy

In order of priority, the forms of verification that the HAP-NJ will use are:

Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system

Up-front Income Verification (UIV) using a non-HUD system

Written Third-Party Verification (may be provided by applicant or participant)

Written Third-party Verification Form

Oral Third-party Verification

Self-Certification

Each of the verification methods is discussed in subsequent sections below.

Requirements for Acceptable Documents

HAP-NJ Policy

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

Print-outs from Web pages are considered original documents.

The HAP-NJ staff member who views the original document must make a photocopy and time stamp the copy.

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

File Documentation

The HAP-NJ 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 HAP-NJ 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.

HAP-NJ Policy

The HAP-NJ will document, in the family file, the following:

Reported family annual income

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Value of assets

Expenses related to deductions from annual income

Other factors influencing adjusted income

When the HAP-NJ is unable to obtain third-party verification, the HAP-NJ will document in the family file the reason that third-party verification was not available [24 CFR 982.516(a)(2); Notice PIH 2010-19].

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

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

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 HAP-NJ 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 HAP-NJ.

See Chapter 6 for the HAP-NJ'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 reexaminations or recertifications of family composition and income in accordance with 24 CFR 5.236 and 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.

EIV Income 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.

HAP-NJ Policy

The HAP-NJ will obtain income reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6-I.C. Income reports may also 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, and as necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI

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benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

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

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

EIV Identity Verification

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

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].

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

HAP-NJ Policy

The HAP-NJ will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

The HAP-NJ will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When the HAP-NJ determines that discrepancies exist due to HAP-NJ errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

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.

HAP-NJ Policy

The HAP-NJ will inform all applicants and participants of its use of the following UIV resources during the admission and reexamination process:

HUD's EIV system

State of New Jersey SWICA system

State of New Jersey Child Support Website

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

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to the HAP-NJ by the family. If written third-party verification is not available, the HAP-NJ must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

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Written Third-Party Verification [Notice PIH 2010-19]

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

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.

The HAP-NJ is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

The HAP-NJ 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.

HAP-NJ Policy

Third-party documents provided by the family must be dated within 60 days of the HAP-NJ request date.

If the HAP-NJ determines that third-party documents provided by the family are not acceptable, the HAP-NJ will explain the reason to the family and request additional documentation.

As verification of earned income, the HAP-NJ will require the family to provide the two most current, consecutive pay stubs.

Written Third-Party Verification Form

When upfront verification is not available and the family is unable to provide written third-party documents, the HAP-NJ must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

PHAs may mail, fax, or e-mail third-party written verification form requests to third-party sources.

HAP-NJ Policy

The HAP-NJ will send third-party verification forms directly to the third party.

Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by the HAP-NJ.

Oral Third-Party Verification [Notice PIH 2010-19]

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

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PHAs should 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.

HAP-NJ Policy

In collecting third-party oral verification, HAP-NJ staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification the HAP-NJ 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 2010-19]

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.

HAP-NJ Policy

If the family cannot provide original documents, the HAP-NJ 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

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].

HAP-NJ Policy

The HAP-NJ will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

7-I.E. SELF-CERTIFICATION

Self-certification, or "tenant declaration," is used as a last resort when the HAP-NJ is unable to obtain third-party verification.

When the HAP-NJ relies on a tenant declaration for verification of income, assets, or expenses, the family's file must be documented to explain why third-party verification was not available.

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HAP-NJ 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 HAP-NJ.

The HAP-NJ 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 HAP-NJ 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 HAP-NJ representative or HAP-NJ notary public.

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PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

HAP-NJ Policy

The HAP-NJ will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicles identification card U.S. military discharge (DD 214) Current U.S. passport Current employer identification card	Certificate of birth Adoption papers Custody agreement Health and Human Services ID Certified school records For newborns: self-certification from parent of child's legal identity, crib card or social security card until other form of verification is obtained

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 HAP-NJ'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 HAP-NJ and be signed in the presence of a HAP-NJ representative or HAP-NJ notary public.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the HAP-NJ 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 2012-10]

The family must provide documentation of a valid 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 HAP-NJ must accept the following documentation as acceptable evidence of the social security number:

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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

The HAP-NJ 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.

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ within 30 days.

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 HAP-NJ 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.

HAP-NJ Policy

The HAP-NJ will grant one additional 30-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 HAP-NJ will terminate the individual's assistance.

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 HAP-NJ 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 HAP-NJ 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 HAP-NJ is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

HAP-NJ Policy

The HAP-NJ will grant one additional 30-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 continuously-assisted occupancy.

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HAP-NJ Policy

The HAP-NJ 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 HAP-NJ 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.

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.

HAP-NJ Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, the HAP-NJ will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified only once during continuously-assisted occupancy.

7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

HAP-NJ Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

Marriage

HAP-NJ Policy

Certification by the head of household is normally sufficient verification. If the HAP-NJ has reasonable doubts about a marital relationship, the HAP-NJ will require the family to document the marriage.

A marriage certificate generally is required to verify that a couple is married.

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Separation or Divorce

HAP-NJ Policy

Certification by the head of household is normally sufficient verification. If the HAP-NJ has reasonable doubts about a separation or divorce, the HAP-NJ 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.

Absence of Adult Member

HAP-NJ Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

Foster Children and Foster Adults

HAP-NJ Policy

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

7-II.E. VERIFICATION OF STUDENT STATUS

General Requirements

HAP-NJ Policy

The HAP-NJ 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.*

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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HAP-NJ Policy

In accordance with the verification hierarchy described in section 7-1.B, the HAP-NJ will determine whether the student is exempt from the restrictions in 24 CFR 5.612 by verifying any one of the following exemption criteria:

The student is enrolled at an educational institution that does not meet the definition of *institution of higher education* in the Higher Education Act of 1965 (see section Exhibit 3-2).

The student is at least 24 years old.

The student is a veteran, as defined in section 3-II.E.

The student is married.

The student has at least one dependent child, as defined in section 3-II.E.

The student is a person with disabilities, as defined in section 3-II.E, and was receiving assistance prior to November 30, 2005.

If the HAP-NJ cannot verify at least one of these exemption criteria, the HAP-NJ 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 HAP-NJ will then proceed to verify either the student's parents' income eligibility (see section 7-III.J) or the student's independence from his/her parents (see below).

Independent Student

HAP-NJ Policy

The HAP-NJ 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 prior year income tax returns to verify whether a parent has claimed the student as a dependent

Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is $0.

7-II.F. DOCUMENTATION OF DISABILITY

The HAP-NJ must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The HAP-NJ is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The HAP-NJ may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the HAP-NJ receives a verification document that provides such information, the HAP-NJ will not

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place this information in the tenant file. Under no circumstances will the HAP-NJ 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 inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

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

Family Members Receiving SSA Disability Benefits

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

HAP-NJ Policy

For family members claiming disability who receive disability benefits from the SSA, the HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 they will be required to provide it to the HAP-NJ.

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.

HAP-NJ 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]

Overview

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and HAP-NJ verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy. [24 CFR 5.508(g)(5)]

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The HAP-NJ may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

HAP-NJ Policy

Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the HAP-NJ receives information indicating that an individual's declaration may not be accurate.

Eligible Immigrants

Documents Required

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

HAP-NJ 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 HAP-NJ must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The HAP-NJ will follow all USCIS protocols for verification of eligible immigration status.

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7-II.H. VERIFICATION OF PREFERENCE STATUS

The HAP-NJ must verify any preferences claimed by an applicant that determined placement on the waiting list.

HAP-NJ Policy

Preference	Verification
Families that reside in Plainfield, including families who work or who have been notified to work in Plainfield.	Lease, utility bill, or employer verification letter
Families with dependents	Family declaration and verification of legal identity
Families with a member who is disabled	Disability verification as described above
Families with a member who is a disabled veteran	Disability verification as described above and DD 214
Families with a member who is a veteran	DD 214
Families with a member who is aged 62 years of age or older	Age verification as described above

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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 HAP-NJ policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

Tips

HAP-NJ Policy

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

Wages

HAP-NJ Policy

For wages other than tips, the family must provide originals of the two most current, consecutive pay stubs. At the HAP-NJ discretion, a tax return may also be required.

7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

HAP-NJ Policy

Business owners and self-employed persons will be required to provide:

An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

All schedules completed for filing federal and local taxes in the preceding year.

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

The HAP-NJ will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination the HAP-NJ 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 HAP-NJ 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 HAP-NJ will require the family to provide documentation of income and expenses for this period and use that information to project income.

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7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

Social Security/SSI Benefits

HAP-NJ Policy

To verify the SS/SSI benefits of applicants, the HAP-NJ will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the HAP-NJ will help the applicant request a benefit verification letter from SSA's Web site at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the applicant has received the benefit verification letter they will be required to provide it to the HAP-NJ.

To verify the SS/SSI benefits of participants, the HAP-NJ will obtain information about social security/SSI benefits through the HUD EIV System, and confirm with the participant(s) that the current listed benefit amount is correct. If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, the HAP-NJ will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the HAP-NJ will help the participant request a benefit verification letter from SSA's Web site 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 they will be required to provide it to the HAP-NJ.

7-III.D. ALIMONY OR CHILD SUPPORT

HAP-NJ Policy

The methods the HAP-NJ 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:

UIV through State of New Jersey Child Support website

Copies of the receipts and/or payment stubs for the 60 days prior to HAP-NJ request

Third-party verification form from the state or local child support enforcement agency

Third-party verification form from the person paying the support

Family's self-certification of amount received

If the family declares that it ***receives irregular or no payments***, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

UIV through State of New Jersey Child Support website

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A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts

If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

Note: Families are not required to undertake independent enforcement action.

7-III.E. ASSETS AND INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The HAP-NJ needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

HAP-NJ Policy

The HAP-NJ will verify the value of assets disposed of only if:

The HAP-NJ does not already have a reasonable estimation of its value from previously collected information, or

The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a $10,000 certificate of deposit at the last annual reexamination and the HAP-NJ verified this amount. Now the person reports that she has given this $10,000 to her son. The HAP-NJ 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 her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the HAP-NJ will verify the value of this asset.

7-III.F. NET INCOME FROM RENTAL PROPERTY

HAP-NJ Policy

The family must provide:

A current executed lease for the property that shows the rental amount or certification from the current tenant

A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the HAP-NJ will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

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7-III.G. RETIREMENT ACCOUNTS

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

7-III.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I.

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 HAP-NJ 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 excluded from the annual income determination (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 HAP-NJ **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).

HAP-NJ Policy

The HAP-NJ will accept the family's self-certification as verification of fully excluded income. The HAP-NJ may request additional documentation if necessary to document the income source.

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The HAP-NJ will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

7-III.I. ZERO ANNUAL INCOME STATUS

HAP-NJ Policy

The HAP-NJ will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, and earnings are not being received by families claiming to have zero annual income.

7-III.J. STUDENT FINANCIAL ASSISTANCE

Any financial assistance, in excess of amounts received for tuition, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR 5.609(b)(9) and FR 4/10/06].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, the HAP-NJ would not be able to determine whether or to what extent the income is to be excluded (see section 7-III.H).

HAP-NJ 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 HAP-NJ will request written third-party verification of both the source and the amount. 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, the HAP-NJ will request written verification of the student's tuition amount.

If the HAP-NJ is unable to obtain third-party written verification of the requested information, the HAP-NJ will pursue other forms of verification following the verification hierarchy in section 7-I.B.

7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents in accordance with HAP-NJ policy [24 CFR 5.612 and FR 4/10/06, p. 18146].

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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.

HAP-NJ Policy

If the HAP-NJ is required to determine the income eligibility of a student's parents, the HAP-NJ will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3-II.E). The HAP-NJ will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to the HAP-NJ. The required information must be submitted (postmarked) within 10 business days of the date of the HAP-NJ's request or within any extended timeframe approved by the HAP-NJ.

The HAP-NJ 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

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

The dependent and elderly/disabled family deductions require only that the HAP-NJ 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 HAP-NJ 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 age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

Elderly/Disabled Family Deduction

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. The HAP-NJ must verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

7-IV.B. MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

HAP-NJ Policy

Medical expenses will be verified through:

Written third-party documents provided by the family, such as pharmacy printouts or receipts.

The HAP-NJ will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The HAP-NJ 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 third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, the HAP-NJ must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.

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- Costs incurred in past years are counted only once.

Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62, or a person with disabilities. The HAP-NJ must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for the HAP-NJ's policy on what counts as a medical expense.

Unreimbursed Expenses

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

HAP-NJ 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.

Expenses Incurred in Past Years

HAP-NJ Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, the HAP-NJ will verify:

The anticipated repayment schedule

The amounts paid in the past, and

Whether the amounts to be repaid have been deducted from the family's annual income in past years

7-IV.C. DISABILITY ASSISTANCE EXPENSES

Policies related to disability 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.

Amount of Expense

Attendant Care

HAP-NJ Policy

The HAP-NJ will accept written third-party documents provided by the family.

If family-provided documents are not available, the HAP-NJ will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

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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.

If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Auxiliary Apparatus

HAP-NJ 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 HAP-NJ 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 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

Family Member is a Person with Disabilities

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The HAP-NJ will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

Family Member(s) Permitted to Work

The HAP-NJ must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

HAP-NJ Policy

The HAP-NJ 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.

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.

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Unreimbursed Expenses

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

HAP-NJ 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.

7-IV.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the HAP-NJ must verify that:

- 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.
- The costs are reasonable.

Eligible Child

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The HAP-NJ 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.

HAP-NJ 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 HAP-NJ must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

HAP-NJ Policy

Information to be Gathered

The HAP-NJ 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.

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Seeking Work

Whenever possible the HAP-NJ will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the HAP-NJ 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 HAP-NJ any reports provided to the other agency.

In the event third-party verification is not available, the HAP-NJ will provide the family with a form on which the family member must record job search efforts. The HAP-NJ will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

The HAP-NJ will request third-party documentation to verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

Gainful Employment

The HAP-NJ 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 Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

HAP-NJ Policy

The HAP-NJ will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

The HAP-NJ will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The HAP-NJ 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.

HAP-NJ Policy

The actual costs the family incurs will be compared with the HAP-NJ'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 HAP-NJ will request additional documentation, as required, to support a determination that the higher cost is appropriate.

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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 HAP-NJ.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

Elderly Noncitizens

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

All other Noncitizens

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
• Form I-94 Arrival-Departure Record annotated with one of the following:
  • "Admitted as a Refugee Pursuant to Section 207"
  • "Section 208" or "Asylum"
  • "Section 243(h)" or "Deportation stayed by Attorney General"
  • "Paroled Pursuant to Section 221 (d)(5) of the USCIS"
	• Form I-94 Arrival-Departure Record with no annotation accompanied by:
	  • A final court decision granting asylum (but only if no appeal is taken);
	  • A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);
	  • A court decision granting withholding of deportation; or
	  • A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).

• Form I-688 Temporary Resident Card annotated "Section 245A" or Section 210".	Form I-688B Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274a.12".

- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant's entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*

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Chapter 8

HOUSING QUALITY 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 HAP-NJ to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and HAP-NJ-established requirements. All units must pass an HQS inspection prior to the approval of a lease and at least annually during the term of the contract.

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.

This chapter explains HUD and HAP-NJ requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections the HAP-NJ will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies the HAP-NJ will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

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PART I: PHYSICAL STANDARDS

8-I.A. GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Exhibit 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

Tenant Preference Items

HUD requires the HAP-NJ to enforce minimum HQS but also recognizes that certain judgments about the acceptability of the unit are left to the family. For example, the HAP-NJ must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic appearance of the facilities is acceptable. Exhibit 8-2 summarizes those items that are considered tenant preferences.

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Modifications to Provide Accessibility

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

HAP-NJ Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the HAP-NJ for review.

8-I.B. ADDITIONAL LOCAL REQUIREMENTS

The HAP-NJ may impose variations to the HQS 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)].

Thermal Environment [HCV GB p.10-7]

The HAP-NJ 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.

HAP-NJ Policy

The heating system must be capable of maintaining an interior temperature of 65 degrees Fahrenheit between October 1 and May 1.

Clarifications of HUD Requirements

HAP-NJ Policy

As permitted by HUD, the HAP-NJ 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.

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 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 resecured 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 worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

All sinks must have functioning stoppers.

Security

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

8-I.C. LIFE-THREATENING CONDITIONS [24 CFR 982.404(a)]

HUD requires the HAP-NJ to define life-threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life-threatening conditions within 24 hours of HAP-NJ notification.

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HAP-NJ Policy

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

Any electrical problem or condition that could result in shock or fire

Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.

Utilities not in service, including no running hot water

Conditions that present the imminent possibility of injury

Obstacles that prevent safe entrance or exit from the unit

Absence of a functioning toilet in the unit

Inoperable smoke detectors

If an owner fails to correct life-threatening conditions as required by the HAP-NJ, the HAP-NJ 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 HAP-NJ, the HAP-NJ will enforce the family obligations. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless the HAP-NJ 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.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain 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 a breach of the HQS. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice.

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

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8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]

If a HAP-NJ is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the HAP-NJ must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from the HAP-NJ, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the HAP-NJ will take action in accordance with Section 8-II.G.

HAP-NJ reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

8-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]

If the HAP-NJ determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the HAP-NJ must issue the family a new voucher, and the family and HAP-NJ must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the HAP-NJ must terminate the HAP contract in accordance with its terms.

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PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

The HAP-NJ conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections*. The HAP-NJ conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection on or before the effective date of the HAP Contract.
- *Annual Inspections*. HUD requires the HAP-NJ to inspect each unit under lease at least annually to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be 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.

Inspection of HAP-NJ-Owned Units [24 CFR 982.352(b)]

The HAP-NJ must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a HAP-NJ-owned unit. A HAP-NJ-owned unit is defined as a unit that is owned by the HAP-NJ that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HAP-NJ). The independent agency must communicate the results of each inspection to the family and the HAP-NJ. The independent agency must be approved by HUD, and may be the unit of general local government for the HAP-NJ jurisdiction (unless the HAP-NJ is itself the unit of general local government or an agency of such government).

Inspection Costs

The HAP-NJ may not charge the family or owner for unit inspections or reinspections [24 CFR 982.405(e)]. In the case of inspections of HAP-NJ-owned units, the HAP-NJ may compensate the independent agency from ongoing administrative fee for inspections performed. The HAP-NJ and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

Notice and Scheduling

The family must allow the HAP-NJ to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

HAP-NJ 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 10:00 a.m. and 4:00 p.m. Generally inspections will be conducted on business days only. In the case of a life-threatening

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emergency, the HAP-NJ will give as much notice as possible, given the nature of the emergency.

Owner and Family Inspection Attendance

HUD permits the HAP-NJ to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

HAP-NJ 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 HAP-NJ 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)]

Timing of Initial Inspections

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

HAP-NJ Policy

The HAP-NJ will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA).

Inspection Results and Reinspections

HAP-NJ Policy

If any HQS violations 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 HAP-NJ for good cause. The HAP-NJ will reinspect the unit within 5 business days of the date the owner notifies the HAP-NJ that the required corrections have been made.

If the time period for correcting the deficiencies (or any HAP-NJ-approved extension) has elapsed, or the unit fails HQS at the time of the reinspection, the HAP-NJ will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The HAP-NJ 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 Request for Tenancy Approval after the owner has made repairs, if they are unable to locate another suitable unit.

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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.

HAP-NJ Policy

Utility service must be available for testing at the time of the initial inspection.

Appliances

HAP-NJ Policy

If the family is responsible for supplying the refrigerator, the HAP-NJ will allow the refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by the HAP-NJ. The HAP-NJ will execute the HAP contract based upon a certification from the family that the appliance has been installed and is working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

8-II.C. ANNUAL HQS INSPECTIONS [24 CFR 982.405(a)]

Scheduling the Inspection

Each unit under HAP contract must be inspected within 12 months of the last full HQS inspection.

HAP-NJ Policy

If an adult family member cannot be present on the scheduled date, the family should request that the HAP-NJ reschedule the inspection. The HAP-NJ and family will agree on a new inspection date that generally should take place within 5 business days of the originally-scheduled date. The HAP-NJ may schedule an inspection more than 5 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the HAP-NJ will automatically schedule a second inspection. If the family misses two scheduled inspections without HAP-NJ approval, the HAP-NJ 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 [HCV GB, p. 10-30]

The HAP-NJ will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit.

HAP-NJ Policy

During a special inspection, the HAP-NJ generally will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the HAP-NJ may elect to conduct a full annual inspection.

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8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); HCV GB, p. 10-32]

HUD requires a HAP-NJ supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, the HAP-NJ will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

HAP-NJ Policy

When life-threatening conditions are identified, the HAP-NJ 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 HAP-NJ's notice.

When failures that are not life-threatening are identified, the HAP-NJ 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.

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 HAP-NJ-approved extension), the owner's HAP will be abated in accordance with HAP-NJ 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 HAP-NJ-approved extension, if applicable) the family's assistance will be terminated in accordance with HAP-NJ policy (see Chapter 12).

Extensions

For conditions that are life-threatening, the HAP-NJ cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, the HAP-NJ may grant an exception to the required time frames for correcting the violation, if the HAP-NJ determines that an extension is appropriate [24 CFR 982.404].

HAP-NJ Policy

Extensions may be granted in cases where the HAP-NJ has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

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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 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.

Reinspections

HAP-NJ Policy

The HAP-NJ will conduct a reinspection immediately following the end of the corrective period, or any HAP-NJ 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 HAP-NJ 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 HAP-NJ policies. If the HAP-NJ is unable to gain entry to the unit in order to conduct the scheduled reinspection, the HAP-NJ 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.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, the HAP-NJ 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 HAP-NJ, HUD requires the HAP-NJ to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

HAP-NJ Policy

The HAP-NJ will make all HAP abatements effective the first of the month following the expiration of the HAP-NJ specified correction period (including any extension).

The HAP-NJ will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

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HAP Contract Termination

The HAP-NJ must decide how long any abatement period will continue before the HAP contract will be terminated. The HAP-NJ 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 HAP-NJ will issue a voucher to permit the family to move to another unit as described in Chapter 10.

HAP-NJ Policy

The maximum length of time that HAP may be abated is 90 days. However, if the owner completes corrections and notifies the HAP-NJ before the termination date of the HAP contract, the HAP-NJ may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the HAP-NJ is 30 days.

8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the HAP-NJ (and any extensions), the HAP-NJ 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]

8-III.A. OVERVIEW

No HAP contract can be approved until the HAP-NJ 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.

HAP-NJ-Owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a HAP-NJ-owned unit, the HAP-NJ 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 HAP-NJ-owned unit is defined as a unit that is owned by the HAP-NJ that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HAP-NJ). The independent agency must communicate the results of the rent reasonableness determination to the family and the HAP-NJ. The independent agency must be approved by HUD, and may be the unit of general local government for the HAP-NJ jurisdiction (unless the HAP-NJ 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 HAP-NJ 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 HAP-NJ (or independent agency in the case of HAP-NJ-owned units) will assist the family with the negotiations upon request. At initial occupancy the HAP-NJ 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 inspection have been corrected.

HAP-NJ Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, the HAP-NJ may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises the HAP-NJ will consider unit size and length of tenancy in the other units.

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The HAP-NJ will determine whether the requested increase is reasonable within 30 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rents adjustments will be effective the first of the month following 60 days after the HAP-NJ's receipt of the owner's request or on the date specified by the owner, whichever is later.

HAP-NJ- and HUD-Initiated Rent Reasonableness Determinations

HUD requires the HAP-NJ to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the HAP-NJ to make a determination at any other time. The HAP-NJ may decide that a new determination of rent reasonableness is needed at any time.

HAP-NJ Policy

In addition to the instances described above, the HAP-NJ will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the HAP-NJ determines that the initial rent reasonableness determination was in error or (2) the HAP-NJ determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. The HAP-NJ may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent

Units that Must Not Be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

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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 HAP-NJ 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 HAP-NJ information regarding rents charged for other units on the premises.

8-III.D. HAP-NJ RENT REASONABLENESS METHODOLOGY

How Market Data Is Collected

HAP-NJ Policy

The HAP-NJ uses an electronic database on market rents in the HAP-NJ's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

How Rents Are Determined

HAP-NJ Policy

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. The HAP-NJ will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the HAP-NJ may make adjustments to the range of prices to account for these differences.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference—not its construction costs (e.g., it might cost $20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rental units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of $500/month but new tenants receive the first month's rent free, the

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actual rent for the unit would be calculated as follows: $500 x 11 months = 5500/12 months = actual monthly rent of $488.

The HAP-NJ will notify the owner of the rent the HAP-NJ can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The HAP-NJ 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 the HAP-NJ's request for information or the owner's request to submit information.

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EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Sanitary Facilities

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

Food Preparation and Refuse Disposal

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

Space and Security

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

Thermal Environment

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

Illumination and Electricity

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

Structure and Materials

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

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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 HAP-NJ
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the HAP-NJ). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

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Smoke Detectors

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Hazards and Heath/Safety

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

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EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities*. The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal*. The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security*. The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
- *Energy conservation items*. The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity*. The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.

(6) *Structure and Materials*. Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.

(7) *Indoor Air*. Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.

(8) *Sanitary Conditions*. The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.

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(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 to execution of the HAP contract.

In order for the HAP-NJ 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 HAP-NJ 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 HAP-NJ and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the HAP-NJ, 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 HAP-NJ 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 HAP-NJ may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the HAP-NJ'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 HAP-NJ approval of the tenancy, the HAP-NJ must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The HAP-NJ must also inform the owner or manager or his/her rights and obligations under the Violence against Women Act of 2005 (VAWA) [24 CFR 5.2005(a)(2)].

The HAP-NJ must provide the owner with the family's current and prior address (as shown in the HAP-NJ records) and the name and address (if known to the HAP-NJ) of the landlord at the family's current and prior address [24 CFR 982.307(b)(1)].

The HAP-NJ is permitted, but not required, to offer the owner other information in the HAP-NJ's possession about the tenancy history or drug trafficking of family members [24 CFR 982.307(b)(2)].

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The HAP-NJ's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

The HAP-NJ may not disclose to the owner any confidential information provided by the family in response to a HAP-NJ request for documentation of domestic violence, dating violence, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(b)(4)].

HAP-NJ Policy

The HAP-NJ will not screen applicants for family behavior or suitability for tenancy.

The HAP-NJ will not provide additional screening information to the owner.

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 HAP-NJ to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the HAP-NJ:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the HAP-NJ 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 HAP-NJ 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].

HAP-NJ 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, by email or by fax.

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The family may not submit, and the HAP-NJ will not process, more than one (1) RTA at a time.

When the family submits the RTA the HAP-NJ 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 HAP-NJ 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 HAP-NJ will not accept missing information over the phone.

When the family submits the RTA and proposed lease, the HAP-NJ 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 HAP-NJ 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 HAP-NJ will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the HAP-NJ will attempt to communicate with the owner and family by phone, fax, or email. The HAP-NJ will use mail when the parties cannot be reached by phone, fax, or email.

9-I.C. OWNER PARTICIPATION

The HAP-NJ does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the HAP-NJ 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 HAP-NJ 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 HAP-NJ's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]

The HAP-NJ may <u>not</u> 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.

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HAP-NJ-Owned Units [24 CFR 982.352(b)]

Otherwise eligible units that are owned or substantially controlled by the HAP-NJ issuing the voucher may also be leased in the voucher program. In order for a HAP-NJ-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the HAP-NJ 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 HAP-NJ-owned unit without any pressure or steering by the HAP-NJ.

HAP-NJ Policy

The HAP-NJ does have eligible HAP-NJ-owned units available for leasing under the voucher program.

Special Housing Types [24 CFR 982 Subpart M]

HUD regulations permit, but do not generally require, the HAP-NJ 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 HAP-NJ has chosen to allow.

The regulations do require the HAP-NJ 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 Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

Unit Size

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

Rent Burden [24 CFR 982.508]

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the 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.

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 HAP-NJ 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

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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.

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ to approve a shorter initial lease term if certain conditions are met.

HAP-NJ Policy

The HAP-NJ will not approve an initial lease term of less than one (1) year.

During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be stated in the dwelling lease if they exist.

The HAP-NJ 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 HAP-NJ may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to

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unassisted tenants. However, if the HAP-NJ chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

HAP-NJ Policy

The HAP-NJ will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

Separate Non-Lease Agreements between Owner and Tenant

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner as approved by the HAP-NJ minus the HAP-NJ'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)].

HAP-NJ Policy

The HAP-NJ permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

HAP-NJ Review of Lease

The HAP-NJ will review the dwelling lease for compliance with all applicable requirements.

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HAP-NJ Policy

If the dwelling lease is incomplete or incorrect, the HAP-NJ will notify the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, by email or by fax. The HAP-NJ will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, the HAP-NJ will attempt to communicate with the owner and family by phone, fax, or email. The HAP-NJ will use mail when the parties can't be reached by phone, fax, or email.

The HAP-NJ 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 HAP-NJ determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

HAP-NJ Policy

The HAP-NJ will not review the owner's lease for compliance with state/local law.

9-I.F. TENANCY APPROVAL [24 CFR 982.305]

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the HAP-NJ 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 HAP-NJ 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 HAP-NJ and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must is reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the HAP-NJ, 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)].

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ, the HAP-NJ 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, by email or by fax. The HAP-NJ will not accept corrections over the phone.

If the HAP-NJ determines that the tenancy cannot be approved for any reason, the owner and the family will be notified and given the opportunity to address any reasons for

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disapproval. The HAP-NJ 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 HAP-NJ 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 HAP-NJ and the owner of the dwelling unit. Under the HAP contract, the HAP-NJ 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 HAP-NJ has given approval for the family of the assisted tenancy, the owner and the HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ may not pay any housing assistance payment to the owner.

HAP-NJ Policy

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the HAP-NJ.

The owner and the HAP-NJ will execute the HAP contract. The HAP-NJ will not execute the HAP contract until the owner has submitted IRS form W-9. The HAP-NJ will ensure that the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

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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 HAP-NJ a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, HAP-NJ 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 to owner, the owner must notify the HAP-NJ at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The HAP-NJ 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)].

HAP-NJ Policy

Where the owner is requesting a rent increase, the HAP-NJ will determine whether the requested increase is reasonable within 30 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies the HAP-NJ of the rent change or 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 982.314(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 982.314(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)].

  PHA Policy

  If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give the PHA a copy of the termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give the PHA 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, or stalking and the move is needed to protect the health or safety of the family or family member [24 CFR 982.314(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

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imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.314(b)(4), 24 CFR 982.353(b)].

PHA Policy

If a family requests permission to move with continued assistance based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, or stalking, the PHA will request documentation in accordance with section 16-IX.D of this plan.

The PHA 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 PHA will document the waiver in the family's file.

- The PHA has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
- The PHA determines that the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, 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 the family, the PHA 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 PHA 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 982.314(e)(1)]. However, Notice PIH 2012-42 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.

PHA Policy

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; and (c) the PHA 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.

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The PHA will create a list of families whose moves have been denied due to insufficient funding. When funds become available, the families on this list will take precedence over families on the waiting list. The PHA 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 PHA 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.

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 982.314(e)(2)].

PHA Policy

If the PHA has grounds for denying or terminating a family's assistance, the PHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances.

Restrictions on Elective Moves [24 CFR 982.314(c)]

HUD regulations permit 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 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, or stalking 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 2012-42].

PHA Policy

The PHA will 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 PHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the PHA's jurisdiction.

The PHA may 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 situation over which a family has no control.

In addition, the PHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

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10-I.C. MOVING PROCESS

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 982.314(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 982.314(d)(2), Notice PIH 2012-42]. The notices must be in writing [24 CFR 982.5].

Approval

PHA Policy

Upon receipt of a family's notification that it wishes to move, the PHA 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 PHA will notify the family of its determination within 10 business days following receipt of the family's notification.

Reexamination of Family Income and Composition

PHA Policy

For families approved to move to a new unit within the PHA's jurisdiction, the PHA 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 PHA will follow the policies set forth in Part II of this chapter.

Voucher Issuance and Briefing

PHA Policy

For families approved to move to a new unit within the PHA's jurisdiction, the PHA will issue a new voucher within 10 business days of the PHA's approval to move. No briefing is required for these families. The PHA 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 PHA 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 PHA will follow the policies set forth in Part II of this chapter.

Housing Assistance Payments [24 CFR 982.311(d)]

When a family moves out of an assisted unit, 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

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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.

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PART II: PORTABILITY

10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a 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 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 2012-42].

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.

10-II.B. INITIAL PHA ROLE

Allowable Moves under Portability

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the PHA's jurisdiction under portability. HUD regulations and PHA policy determine whether a family qualifies.

Applicant Families

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.

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PHA Policy

In determining whether or not to deny an applicant family permission to move under portability because the PHA lacks sufficient funding or has grounds for denying assistance to the family, the initial PHA will follow the policies established in section 10-I.B of this chapter.

In addition, 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)].

PHA 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.

The PHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, or stalking. However, any exception to this policy is subject to the approval of the receiving PHA [24 CFR 982.353(c)(3)].

Participant Families

The initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 CFR 982.353(b)]. The Violence against Women Act of 2005 (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 been a victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.353(b)].

PHA Policy

The PHA 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 PHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

Determining Income Eligibility

Applicant Families

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(3)]. The family must specify the area to which the family wishes to move [Notice 2012-42].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c)(1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2012-42].

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Participant Families

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), 24 CFR 982.355(c)(1)].

Reexamination of Family Income and Composition

No new reexamination of family income and composition is required for an applicant family.

PHA Policy

For a participant family approved to move out of its jurisdiction under portability, the PHA 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-52665, Family Portability Information.

The PHA 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.

PHA Policy

No formal briefing will be required for a participant family wishing to move outside the PHA's jurisdiction under portability. However, the PHA 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 PHA will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. The PHA will advise the family that they will be under the RHA's policies and procedures, including subsidy standards and voucher extension policies.

Voucher Issuance and Term

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the PHA will follow the regulations and procedures set forth in Chapter 5.

PHA Policy

For participating families approved to move under portability, the PHA will issue a new voucher within 10 business days of the PHA's approval to move.

The initial term of the voucher will be 60 days.

Voucher Extensions and Expiration

PHA Policy

The PHA will automatically approve one 30 day extension for portability. After the first extension, no additional 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

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voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial 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 60 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

Preapproval Contact with the Receiving PHA

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 [Notice PIH 2012-42].

PHA Policy

The PHA 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 to expect the family [24 CFR 982.355(c)(2)]. This means that the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2012-42]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(2)].

PHA Policy

Because the portability process is time-sensitive, the PHA 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 PHA will pass this information along to the family. The PHA 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 2012-42]
- A copy of the family's voucher [Notice PIH 2012-42]

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- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2012-42]
- 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)(4), Notice PIH 2012-42]

PHA Policy

In addition to these documents, the PHA may provide the following information to the receiving PHA:

Social security numbers (SSNs)

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

The PHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

Initial Billing Deadline [Notice PIH 2012-42]

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

PHA Policy

If the PHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail on the next business day. If the PHA reports that the family is not yet under HAP contract, the PHA will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. The PHA will send the receiving PHA a written confirmation of its decision by mail.

The PHA 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.

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Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2012-42]

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of overleasing 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.

PHA 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.

Annual Updates of Form HUD-50058

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family.

Denial or Termination of Assistance [24 CFR 982.355(c)(9)]

If the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the initial PHA may act on those grounds at any time. (For PHA 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)].

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

Responding to Initial PHA's Request

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. 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 [Notice PIH 2012-42].

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PHA Policy

The PHA will use e-mail, when possible, to notify the initial PHA whether it will administer or absorb the family's voucher.

Initial Contact with Family

When a family moves into the PHA's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2012-42].

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 2012-42]. (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 2012-42].

PHA Policy

The PHA will not require the family to attend a briefing. The PHA 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.

Income Eligibility and Reexamination

HUD allows the receiving PHA to conduct its own income reexamination of a portable family [24 CFR 982.355(c)(4)]. However, the receiving PHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2012-42, 24 CFR 982.201(b)(4)]. The receiving PHA does not redetermine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(1)].

PHA Policy

For any family moving into its jurisdiction under portability, the PHA will conduct a new reexamination of family income and composition. However, the PHA will not delay issuing the family a voucher for this reason. Nor will the PHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the PHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, the PHA 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

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be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

Voucher Issuance

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(b)(6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c)(6)].

Timing of Voucher Issuance

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 2012-42].

PHA Policy

When a family ports into its jurisdiction, the PHA 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 from the initial PHA has expired or the family does not comply with the PHA's procedures. The PHA will update the family's information when verification has been completed.

Voucher Term

The term of the receiving PHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c)(6)].

PHA Policy

The receiving PHA's voucher will expire on the same date as the initial PHA's voucher.

Voucher Extensions [24 CFR 982.355(c)(6), Notice 2012-42]

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

PHA Policy

The PHA generally will not extend the term of the voucher that it issues to an incoming portable family unless the PHA 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 PHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Notifying the Initial PHA

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible

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unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e)(5), Notice PIH 2012-42]. (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 2012-42].

Administering a Portable Family's Voucher

Initial Billing Deadline

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the receiving PHA **executes** a HAP contract on behalf of the family **and** (b) in time that the notice will be **received** no later than 60 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2012-42]. 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.

PHA Policy

The PHA will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is overleased) [Notice PIH 2012-42].

Ongoing Notification Responsibilities [Notice PIH 2012-42, 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.

PHA Policy

The PHA will send a copy of the updated HUD-50058 by regular mail at the same time the PHA and owner are notified of the reexamination results.

Change in Billing Amount. The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments

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- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification.

Late Payments [Notice PIH 2012-42]

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.

Overpayments [Notice PIH 2012-42]

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 2012-42.

Denial or Termination of Assistance

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(10)].

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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 [Notice PIH 2012-42].

PHA Policy

If the PHA elects to deny or terminate assistance for a portable family, the PHA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. The PHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The receiving PHA will furnish the initial PHA with a copy of the review or hearing decision.

Absorbing a Portable Family

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that (a) the PHA has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in overleasing [24 CFR 982.355(d)(1), Notice PIH 2012-42].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family [Notice PIH 2012-42].

PHA Policy

If the PHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the PHA 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 PHA decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability.

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Chapter 11

REEXAMINATIONS

INTRODUCTION

The HAP-NJ 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 HAP-NJ 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.

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 HAP-NJ 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.

11-I.B. SCHEDULING ANNUAL REEXAMINATIONS

The HAP-NJ 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].

HAP-NJ Policy

The HAP-NJ will begin the annual reexamination process 90 days in advance of its scheduled effective date. Generally, the HAP-NJ 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).

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If the family moves to a new unit, the HAP-NJ will perform a new annual reexamination.

The HAP-NJ 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 HAP-NJ is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the HAP-NJ. However, HAP-NJs should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

HAP-NJ Policy

Families generally are required to participate in an annual reexamination interview, which must be attended by the all adults age 18 and older. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the HAP-NJ 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.

If the family is unable to attend a scheduled interview, the family should contact the HAP-NJ in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, the HAP-NJ will send a second notification with a new interview date and appointment time.

If a family fails to attend two scheduled interviews without HAP-NJ 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 HAP-NJ must execute a certification attesting to the role and the assistance provided by any such third party.

11-I.C. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the HAP-NJ regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

HAP-NJ 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 HAP-NJ-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

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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).

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 HAP-NJ has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (HQS) (see Chapter 8), the HAP-NJ must issue the family a new voucher, and the family and HAP-NJ must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the HAP-NJ must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

11-I.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]

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

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, 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 in accordance with HAP-NJ policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

HAP-NJ Policy

During the annual reexamination process, the HAP-NJ will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

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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 HAP-NJ will process a reexamination in accordance with the policies in this chapter.

11-I.E. EFFECTIVE DATES

The HAP-NJ must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

HAP-NJ 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 HAP-NJ 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 HAP-NJ, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any 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 HAP-NJ 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 HAP-NJ.

If the family causes a delay in processing the annual reexamination, d*ecreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the HAP-NJ by the date specified, and this delay prevents the HAP-NJ from completing the reexamination as scheduled.

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PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]

11-II.A. OVERVIEW

Family circumstances may change between annual reexaminations. HUD and HAP-NJ policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the HAP-NJ must process interim reexaminations to reflect those changes. HUD regulations also permit the HAP-NJ to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. The HAP-NJ must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and HAP-NJ policies describing what changes families are required to report, what changes families may choose to report, and how the HAP-NJ will process both HAP-NJ- and family-initiated interim reexaminations.

11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

The family is required to report all changes in family composition. The HAP-NJ must adopt policies prescribing when and under what conditions the family must report changes in income and housing composition. However, due to family obligations under the program, the HAP-NJ has limited discretion in this area.

HAP-NJ Policy

The HAP-NJ will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

New Family Members Not Requiring HAP-NJ Approval

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require HAP-NJ approval. However, the family is required to promptly notify the HAP-NJ of the addition [24 CFR 982.551(h)(2)].

HAP-NJ Policy

The family must inform the HAP-NJ of the birth, adoption, or court-awarded custody of a child within 10 business days.

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 HAP-NJ approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the HAP-NJ must conduct a reexamination to determine any new income or deductions associated with the additional family member and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR 982.516(e)].

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If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the HAP-NJ must issue the family a new voucher, and the family and HAP-NJ must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the HAP-NJ must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

HAP-NJ Policy

Families must request HAP-NJ 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 60 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 HAP-NJ prior to the individual moving into the unit.

The HAP-NJ will not approve the addition of a new family or household member unless the individual meets the HAP-NJ's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

The HAP-NJ will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards, but may consider exceptions on a case-by-case basis.

If the HAP-NJ determines an individual meets the HAP-NJ's eligibility criteria and documentation requirements, the HAP-NJ will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If the HAP-NJ determines that an individual does not meet the HAP-NJ's eligibility criteria or documentation requirements, the HAP-NJ 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.

The HAP-NJ 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 HAP-NJ if any family member no longer lives in the unit

[24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the HAP-NJ also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

HAP-NJ Policy

If a household member ceases to reside in the unit, the family must inform the HAP-NJ within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the HAP-NJ within 10 business days.

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11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because the HAP-NJ 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 HAP-NJ may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

HAP-NJ-Initiated Interim Reexaminations

HAP-NJ-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the HAP-NJ. They are not scheduled because of changes reported by the family.

HAP-NJ Policy

The HAP-NJ will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), the HAP-NJ will conduct an interim reexamination at the start and conclusion of the second 12 month exclusion period (50 percent phase-in period).

If the family has reported zero income, the HAP-NJ will conduct an interim reexamination every 6 months as long as the family continues to report that they have no income.

If 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 HAP-NJ 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 HAP-NJ will conduct an interim reexamination.

The HAP-NJ may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

Family-Initiated Interim Reexaminations

The HAP-NJ must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)].

Required Reporting

HUD regulations give the HAP-NJ the freedom to determine the circumstances under which families will be required to report changes affecting income.

HAP-NJ Policy

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Families are required to report all increases in earned income, including new employment, within 10 business days of the date the change takes effect. The HAP-NJ will process the interim.

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 HAP-NJ 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.

HAP-NJ Policy

If a family reports a change that it was not required to report and that would result in a decrease in the family share of rent, the HAP-NJ will conduct an interim reexamination. See Section 11-II.D. for effective dates.

Families may report changes in income or expenses at any time.

11-II.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

HAP-NJ Policy

The family may notify the HAP-NJ of changes in writing. Generally, the family will not be required to attend an interview for an interim reexamination. However, if the HAP-NJ determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the HAP-NJ 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 HAP-NJ. This time frame may be extended for good cause with HAP-NJ approval. The HAP-NJ will accept required documentation by mail, by fax, or in person.

Effective Dates

The HAP-NJ 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].

HAP-NJ Policy

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

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If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported and all required documentation was submitted. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

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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 HAP-NJ must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the HAP-NJ'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 HAP-NJ changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the HAP-NJ's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
    - If the payment standard amount has i*ncreased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
    - If the payment standard amount has *decreased*, the decreased payment standard will be applied at the *second annual* reexamination following the effective date of the decrease in the payment standard.
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

Subsidy Standards [24 CFR 982.505(c)(4)]

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the HAP-NJ's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's *first annual* reexamination following the change in family unit size.

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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 HAP-NJ'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 HAP-NJ must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the HAP-NJ must use the HAP-NJ current utility allowance schedule [24 CFR 982.517(d)(2)].

HAP-NJ 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 HAP-NJ 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 HAP-NJ'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).

11-III.D. DISCREPANCIES

During an annual or interim reexamination, the HAP-NJ may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the HAP-NJ may discover errors made by the HAP-NJ. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 14.

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Chapter 12

TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify mandatory and optional grounds for which a HAP-NJ 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 HAP-NJ.

Part II: Approach to Termination of Assistance. This part describes the policies and the process that the HAP-NJ 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 HAP-NJ may consider in lieu of termination, the criteria the HAP-NJ will use when deciding what action to take, and the steps the HAP-NJ 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

12-I.A. OVERVIEW

HUD requires the HAP-NJ 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 HAP-NJ 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 HAP-NJ.

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of the housing assistance payment decreases. If the amount of assistance provided by the HAP-NJ is reduced to zero, the family's assistance terminates automatically 180 days after the last HAP payment.

HAP-NJ 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 HAP-NJ of the change and request an interim reexamination before the expiration of the 180-day period.

12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that the HAP-NJ terminate housing assistance payments on behalf of the family at any time.

HAP-NJ 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 HAP-NJ will follow the notice requirements in Section 12-II.F.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

HUD requires the HAP-NJ to terminate assistance in the following circumstances.

Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]

The HAP-NJ 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, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

HAP-NJ 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 HAP-NJ 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 HAP-NJ will consider the factors described in sections 12-II.D and 12-II.E. Upon consideration of such factors, the HAP-NJ 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 HAP-NJ 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.

Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]

The HAP-NJ must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the HAP-NJ, 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ determined the family to be noncompliant.

HAP-NJ Policy

The HAP-NJ may defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 30 calendar days for

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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 HAP-NJ 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]

Should a HAP-NJ 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 HAP-NJ must immediately terminate assistance for the household member.

In this situation, the HAP-NJ 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 HAP-NJ 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 HAP-NJ must the terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and HAP-NJ 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 HAP-NJ 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 HAP-NJ to establish policies that permit the HAP-NJ to terminate assistance if the HAP-NJ determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents

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- 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

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ 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 HAP-NJ will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

In making its decision to terminate assistance, the HAP-NJ 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 HAP-NJ may, on a case-by-case basis, choose not to terminate assistance.

Drug-Related and Violent Criminal Activity [24 CFR 5.100]

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

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

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

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In making its decision to terminate assistance, the HAP-NJ 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 HAP-NJ 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 HAP-NJ to terminate assistance under a number of other circumstances. It is left to the discretion of the HAP-NJ 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 2005 explicitly prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, or stalking as reasons for terminating the assistance of a victim of such abuse.

HAP-NJ Policy

The HAP-NJ **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency program.

The HAP-NJ **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 HAP-NJ policies.

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 currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs.

The family has not reimbursed any PHA for amounts 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 HAP-NJ.

A family member has engaged in or threatened violent or abusive behavior toward HAP-NJ personnel.

Abusive or violent behavior towards HAP-NJ 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 HAP-NJ will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E.

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Upon consideration of such alternatives and factors, the HAP-NJ may, on a case-by-case basis, choose not to terminate assistance.

Family Absence from the Unit [24 CFR 982.312]

The family may be absent from the unit for brief periods. The HAP-NJ 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.

HAP-NJ 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 HAP-NJ may terminate HAP contracts if the HAP-NJ determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ determines there is a shortage of funding, prior to terminating any HAP contracts, the HAP-NJ will determine if any other actions can be taken to reduce program costs.

In the event that the HAP-NJ decides to stop issuing vouchers as a result of a funding shortfall, and the HAP-NJ 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 HAP-NJ resumes issuing vouchers, the HAP-NJ 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 HAP-NJ will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the HAP-NJ will inform the local HUD field office. The HAP-NJ will terminate the minimum number needed in order to reduce HAP costs to a level within the HAP-NJ's annual budget authority.

If the HAP-NJ must terminate HAP contracts due to insufficient funding, the HAP-NJ will do so in accordance with the following criteria and instructions:

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.

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The PHA will terminate HAP contracts starting with Category 1 families. The PHA will only move to the next category when there are no families remaining in the current category and more HAP contract terminations are necessary.

Category 1: Families who have committed program fraud or abuse within the past 6 months. Within each group below, the PHA will terminate HAP contracts according to the date the PHA first notified the family of the debt, starting with the most recent. If more than one family received notice on the same day, the PHA will rank the notices for that date using a random method.

First, the PHA will terminate families who owe the PHA money but are not yet under repayment agreement.

Second, the PHA will terminate families who owe the PHA money, are under repayment agreement, but have made at least one late payment.

Third, the PHA will terminate families who owe the PHA money, are under repayment agreement, and have made all payments in accordance with the repayment agreement.

Category 2: Families who committed program fraud or abuse 6-12 months ago.

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PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A. OVERVIEW

The HAP-NJ 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 HAP-NJ the authority to either terminate the family's assistance or to take another action. This part discusses the various actions the HAP-NJ may choose to take when it has discretion, and outlines the criteria the HAP-NJ 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 HAP-NJ's intent to terminate assistance.

12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

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 HAP-NJ 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)].

HAP-NJ 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 HAP-NJ request.

Repayment of Family Debts

HAP-NJ Policy

If a family owes amounts to the HAP-NJ, as a condition of continued assistance, the HAP-NJ will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the HAP-NJ 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 HAP-NJ 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)].

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HAP-NJ Policy

The HAP-NJ will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

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

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

The HAP-NJ is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

HAP-NJ Policy

The HAP-NJ will consider the following factors when making its decision to terminate assistance:

The seriousness of the case, especially with respect to how it would affect other residents

The effects that termination of assistance may have on other members of the family who were not involved in the action or failure 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 12-II.E) a victim of domestic violence, dating violence, or stalking

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future

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

The HAP-NJ 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

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

If the family includes a person with disabilities, the HAP-NJ's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

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HAP-NJ 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 HAP-NJ will determine whether the behavior is related to the disability. If so, upon the family's request, the HAP-NJ will determine whether alternative measures are appropriate as a reasonable accommodation. The HAP-NJ 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, OR STALKING

This section describes the protections against termination of assistance that the Violence against Women Act of 2005 (VAWA) provides for victims of domestic violence, dating violence, and stalking. For general VAWA requirements, key VAWA definitions, and HAP-NJ 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, 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.)

First, VAWA provides that a HAP-NJ 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 HAP-NJ, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.314(b)(4)].

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking 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)].

Third, it provides that criminal activity directly related to domestic violence, dating violence, 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 an immediate family member of the tenant is the actual or threatened victim of the domestic violence, dating violence, or stalking [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)].

Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)]

VAWA does not limit the authority of a HAP-NJ to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, or stalking so long as the HAP-NJ

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does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].

Likewise, VAWA does not limit the authority of a HAP-NJ to terminate the assistance of a victim of domestic violence, dating violence, or stalking if the HAP-NJ 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)].

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)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a HAP-NJ 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)].

HAP-NJ Policy

In determining whether a program participant who is a victim of domestic violence, dating violence, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the HAP-NJ will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, or stalking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within a short period of time

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest the HAP-NJ'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]

HAP-NJ Policy

When an individual facing termination of assistance for reasons related to domestic violence, dating violence, or stalking claims protection under VAWA, the HAP-NJ will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D of this plan.

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The HAP-NJ 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 HAP-NJ will document the waiver in the individual's file.

Terminating the Assistance of a Domestic Violence Perpetrator

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives the HAP-NJ 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 HAP-NJ 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 HAP-NJ 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].

HAP-NJ Policy

The HAP-NJ will terminate assistance to a family member if the HAP-NJ determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, the HAP-NJ will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to the HAP-NJ by the victim in accordance with this section and section 16-IX.D. The HAP-NJ will also consider the factors in section 12-II.D. Upon such consideration, the HAP-NJ may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the HAP-NJ 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.

HAP-NJ Policy

Whenever a family's assistance will be terminated, the HAP-NJ will send a written notice of termination to the family and to the owner. 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 HAP-NJ policies, or the circumstances surrounding the termination require.

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When the HAP-NJ notifies an owner that a family's assistance will be terminated, the HAP-NJ 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 HAP-NJ sends to the family must meet the additional HUD and HAP-NJ notice requirements discussed in section 16-III.C of this plan. Although HUD does not require PHAs to include information about the protections against termination of assistance provided by the Violence against Women Act of 2005 (VAWA) to victims of domestic violence, dating violence, or stalking, PHAs have the discretion to include such information.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, the HAP-NJ 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 HAP-NJ 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, or stalking and the victim is protected from eviction by the Violence against Women Act of 2005 (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the HAP-NJ's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

Violation of Federal, State, or Local Law

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

Criminal Activity or Alcohol Abuse

The owner may terminate tenancy during the term of the lease if any *covered person*—meaning any member of the household, a guest, or another person under the tenant's control—commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises)
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises
- Any violent criminal activity on or near the premises
- Any drug-related criminal activity on or near the premises

However, in the case of criminal activity directly related to domestic violence, dating violence, or stalking, if the tenant or an immediate member of the tenant's family is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy (see section 12-II.E).

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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.

Other Good Cause

During the initial lease term, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, "other good cause" for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit
- 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.

Note that "other good cause" does **not** include vacating a property that has been foreclosed upon during the lease term prior to the sale of that property. However, the new owner of the property may terminate the tenancy effective on the date of transfer of the unit if the owner will occupy the unit as a primary residence and has provided the tenant a notice to vacate at least 90 days before the effective date of such notice [Notice PIH 2010-49]. Further information on the protections afforded to tenants in the event of foreclosure can be found in Section 13-II.G.

12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

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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 HAP-NJ a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the HAP-NJ a copy of any eviction notice (see Chapter 5).

HAP-NJ Policy

If the eviction action is finalized in court, the owner must provide the HAP-NJ 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.

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.

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An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, or stalking is limited by the Violence against Women Act of 2005 (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 HAP-NJ has no other grounds for termination of assistance, the HAP-NJ 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 HAP-NJ 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 HAP-NJ or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

  HAP-NJ Policy

  Damages beyond normal wear and tear will be considered to be damages which could be assessed against the security deposit.

- The family must allow the HAP-NJ 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.

  HAP-NJ Policy

  The HAP-NJ 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, or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

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

  HAP-NJ Policy

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

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

  HAP-NJ Policy

  The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The HAP-NJ will determine eligibility of the new member in accordance with the policies in Chapter 3.
- The family must promptly notify the HAP-NJ in writing if any family member no longer lives in the unit.
- If the HAP-NJ has given approval, a foster child or a live-in aide may reside in the unit. The HAP-NJ has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when HAP-NJ 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.

  HAP-NJ 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 HAP-NJ 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 HAP-NJ when the family is absent from the unit.

  HAP-NJ 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 HAP-NJ 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

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other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and HAP-NJ 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 HAP-NJ 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 HAP-NJ 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]

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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 HAP-NJ'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 HAP-NJ and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including HAP-NJ 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

HAP-NJs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in the HAP-NJ's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the HAP-NJ to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the HAP-NJ's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, HAP-NJs must identify and recruit new owners to participate in the program.

HAP-NJ Policy

The HAP-NJ will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The HAP-NJ 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 HAP-NJ must also provide the kind of customer service that will encourage participating owners to remain active in the program.

HAP-NJ Policy

All HAP-NJ activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

The HAP-NJ will provide owners with a handbook that explains the program, including HUD and HAP-NJ policies and procedures, in easy-to-understand language.

The HAP-NJ will give special attention to helping new owners succeed through activities such as:

- Coordinating inspection and leasing activities between the HAP-NJ, the owner, and the family.

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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 HAP-NJ to assist families in their housing search by providing the family with a list of landlords or other parties known to the HAP-NJ who may be willing to lease a unit to the family, or to help the family find a unit. Although the HAP-NJ cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the HAP-NJ 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)].

HAP-NJ 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 HAP-NJ. The HAP-NJ will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential unassisted tenant. The HAP-NJ 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 HAP-NJ, 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 Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The HAP-NJ will inspect the owner's

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dwelling unit at least annually to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards and policies for HQS inspections at initial lease-up and throughout the family's tenancy.

The HAP-NJ 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 HAP-NJ 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 HAP-NJ 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:

- Compliance 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 Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the HAP-NJ 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
- Allow reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]

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- Complying with the Violence against Women Reauthorization Act of 2005 (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))

13-I.D. OWNER QUALIFICATIONS

The HAP-NJ does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the HAP-NJ 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 HAP-NJ must not approve the assisted tenancy if the HAP-NJ 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 HAP-NJ 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 HAP-NJ must not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The HAP-NJ may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]

The HAP-NJ 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 HAP-NJ (except a participant commissioner)
- Any employee of the HAP-NJ, or any contractor, subcontractor or agent of the HAP-NJ, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The HAP-NJ must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the HAP-NJ 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;

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- Analysis of and statement of consistency with state and local laws. The local HUD office, the HAP-NJ, 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 HAP-NJ or assistance under the HCV program for an eligible HAP-NJ employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
- If the case involves an investment on the part of a member, officer, or employee of the HAP-NJ, description of the nature of the investment, including disclosure/divestiture plans.

Where the HAP-NJ has requested a conflict of interest waiver, the HAP-NJ may not execute the HAP contract until HUD has made a decision on the waiver request.

HAP-NJ Policy

In considering whether to request a conflict of interest waiver from HUD, the HAP-NJ will consider certain factors such as consistency of the waiver with state and local laws, the existence of alternative housing available to families, the individual circumstances of a particular family, the specific duties of individuals whose positions present a possible conflict of interest, the nature of any financial investment in the property and plans for disclosure/divestiture, and the possible appearance of impropriety.

Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]

HUD regulations permit the HAP-NJ to disapprove a request for tenancy for various actions and inactions of the owner.

If the HAP-NJ 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].

HAP-NJ Policy

The HAP-NJ will refuse to approve a request for tenancy if the HAP-NJ 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;

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The owner has engaged in any drug-related criminal activity or any violent criminal activity;

The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the HAP-NJ, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;

An owner has engaged in or threatened violent or abusive behavior toward HAP-NJ personnel.

Abusive or violent behavior towards HAP-NJ 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.

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 assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the HAP-NJ 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 HAP-NJ may, on a case-by-case basis, choose to approve an owner.

Legal Ownership of Unit

The following represents HAP-NJ policy on legal ownership of a dwelling unit to be assisted under the HCV program.

HAP-NJ Policy

The HAP-NJ 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).

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13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the HAP-NJ.

The owner must cooperate with the HAP-NJ 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 HAP-NJ.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

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PART II. HAP CONTRACTS

13-II.A. OVERVIEW

The HAP contract represents a written agreement between the HAP-NJ and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the HAP-NJ's obligations. Under the HAP contract, the HAP-NJ agrees to make housing assistance payments to the owner on behalf of the family approved by the HAP-NJ 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 HAP-NJ's HCV program.

When the HAP-NJ has determined that the unit meets program requirements and the tenancy is approvable, the HAP-NJ 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

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 HAP-NJ representative and owner [HCV Guidebook, pp. 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, HAP-NJs 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. HAP-NJ policy on the amount of security deposit an owner may collect is found in Chapter 9.

HAP-NJs also have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the HAP-NJ is deemed received by the owner (e.g., upon mailing by the HAP-NJ or actual receipt by the owner).

HAP-NJ Policy

The HAP-NJ has not adopted a policy that defines when the housing assistance payment by the HAP-NJ 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:

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- 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
- HAP-NJ Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- HAP-NJ and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the HAP-NJ. 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ 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

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amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the HAP-NJ, the excess amount must be returned immediately. If the HAP-NJ determines that the owner is not entitled to all or a portion of the HAP, the HAP-NJ 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 HAP-NJ, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

Late HAP Payments [24 CFR 982.451(a)(5)]

The HAP-NJ 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 HAP-NJ 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 HAP-NJ is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the HAP-NJ's control. In addition, late payment penalties are not required if the HAP-NJ intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

Termination of HAP Payments [24 CFR 982.311(b)]

The HAP-NJ 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.

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If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the HAP-NJ 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.

HAP-NJ Policy

The owner must inform the HAP-NJ when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the HAP-NJ when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the HAP-NJ 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 HAP-NJ 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 HAP-NJ of the date when the family actually moves from the unit or the family is physically evicted from the unit.

13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If the HAP-NJ determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

The HAP-NJ 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 HAP-NJ may also obtain additional relief by judicial order or action.

The HAP-NJ 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 HAP-NJ must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

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HAP-NJ Policy

Before the HAP-NJ invokes a remedy against an owner, the HAP-NJ will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the HAP-NJ 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 HAP-NJ will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

13-II.E. HAP CONTRACT TERM AND TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The HAP-NJ terminates the HAP contract;
- The HAP-NJ 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 HAP-NJ 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 HAP-NJ;
- The Annual Contributions Contract (ACC) between the HAP-NJ and HUD expires
- The HAP-NJ elects to terminate the HAP contract.

HAP-NJ Policy

The HAP-NJ may elect to terminate the HAP contract in each of the following situations:

Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];

The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;

The unit does not meet HQS [24 CFR 982.404] – see chapter 8;

The family breaks up [HUD Form 52641] – see chapter 3;

The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

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If the HAP-NJ terminates the HAP contract, the HAP-NJ must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

HAP-NJ Policy

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the HAP-NJ gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to the HAP-NJ any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

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 HAP-NJ.

An owner under a HAP contract must notify the HAP-NJ in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the HAP-NJ.

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 HAP-NJ finds acceptable. The new owner must provide the HAP-NJ with a copy of the executed agreement.

HAP-NJ 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.

The HAP-NJ 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 HAP-NJ will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the HAP-NJ 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;

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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 HAP-NJ 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 HAP-NJ will process the leasing in accordance with the policies in Chapter 9.

13-II.G. FORECLOSURE [HUD-52641 and Notice PIH 2010-49]

Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). Specifically, the HAP contract now contains language stating that in the case of any foreclosure, the immediate successor in interest in the property pursuant to the foreclosure will assume such interest subject to the lease between the prior owner and the tenant, and to the HAP contract between the prior owner and the HAP-NJ for the occupied unit. This provision of the HAP contract does not affect any state or local law that provides longer time periods or other additional protections for tenants.

If the HAP-NJ learns that a property is in foreclosure, it must take the following actions:

- Make all reasonable efforts to determine the status of the foreclosure and ownership of the property. (Further guidance on how to obtain this information can be found in Notice PIH 2010-49.)
- Continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.
- Attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. The written agreement should include a request for owner information, such as 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.
- Inform the tenant that they must continue to pay rent in accordance with the lease, and if the successor in interest refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.
- Inform the tenant in the event that the HAP-NJ is unable to make HAP payments to the successor in interest due an action or inaction by the successor that prevents such payments (e.g., rejection of payments or failure to maintain the property according to HQS), or due to an inability to identify the successor. The HAP-NJ should 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.
- Make reasonable inquiries to determine whether the unit, in addition to having a tenant receiving HCV assistance, will be or has been assisted under the Neighborhood Stabilization Program (NSP). (For further guidance on cases in where the units have been assisted under the NSP, see Notice PIH 2010-49.)

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PHAs are also required to notify HCV applicants who have been issued a voucher, participant heads of household, and current and prospective owners of HCV-assisted housing of the protections afforded to tenants under the PTFA.

HAP-NJ Policy

The HAP-NJ will provide all HCV applicants that have been issued a voucher with information regarding the PTFA at admission (see Section 5-I.B) and to participant heads of household at annual reexamination.

The HAP-NJ will provide information regarding the PTFA to prospective owners when they begin their participation in the HCV program.

Note that the foreclosure provision of the HAP contract and additional tenant protections under the Protecting Tenants at Foreclosure Act will sunset December 31, 2014.

See Section 12-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

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Chapter 14

PROGRAM INTEGRITY

INTRODUCTION

The HAP-NJ is committed to ensuring that subsidy funds made available to the HAP-NJ are spent in accordance with HUD requirements.

This chapter covers HUD and HAP-NJ 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 HAP-NJ policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the HAP-NJ must and may take when errors or program abuses are found.

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

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 in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- 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

HAP-NJ Policy

To ensure that the HAP-NJ's HCV program is administered according to the highest ethical and legal standards, the HAP-NJ will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The HAP-NJ will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

The HAP-NJ 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 HAP-NJ 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 2010-19. In addition, the HAP-NJ will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

The HAP-NJ will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key HAP-NJ forms and form letters that request information from a family or owner.

At every regular reexamination, HAP-NJ staff will explain any changes in HUD regulations or HAP-NJ policy that affect program participants.

The HAP-NJ will require first-time owners (or their agents) to participate in a briefing session on HAP contract requirements.

The HAP-NJ will provide owners with ongoing information about the program, with an emphasis on actions and situations to avoid.

The HAP-NJ will provide each HAP-NJ 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

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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 HAP-NJ will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data

Under the Section 8 Management Assessment Program (SEMAP), HUD requires the HAP-NJ to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

HAP-NJ Policy

In addition to the SEMAP quality control requirements, the HAP-NJ will employ a variety of methods to detect errors and program abuse.

The HAP-NJ routinely will use HUD and other non-HUD sources of up-front income verification.

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 HAP-NJ 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 HAP-NJ activities and notifies the HAP-NJ of errors and potential cases of program abuse.

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

HAP-NJ Policy

The HAP-NJ will encourage staff, program participants, and the public to report possible program abuse.

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14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When the HAP-NJ Will Investigate

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ may investigate possible instances of error or abuse using all available HAP-NJ and public records. If necessary, the HAP-NJ will require HCV families to sign consent forms for the release of additional information.

Analysis and Findings

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the HAP-NJ, 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 HAP-NJ will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

HAP-NJ Policy

In the case of family-caused errors or program abuse, the HAP-NJ will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the HAP-NJ will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation

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has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

Notice and Appeals

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ 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

14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the HAP-NJ must promptly correct the HAP, family share, and any utility reimbursement prospectively.

HAP-NJ Policy

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

Whether the family or owner is required to reimburse the HAP-NJ or the HAP-NJ 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 HAP-NJ to use incorrect information provided by a third party.

Family Reimbursement to HAP-NJ [HCV GB pp. 22-12 to 22-13]

HAP-NJ Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The HAP-NJ 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 HAP-NJ will terminate the family's assistance in accordance with the policies in Chapter 12.

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HAP-NJ Reimbursement to Family [HCV GB p. 22-12]

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ [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)].

HAP-NJ Policy

Any of the following will be considered evidence of family program abuse:

Payment to the owner in excess of amounts authorized by the HAP-NJ for rent, security deposit, and additional services

Offering bribes or illegal gratuities to the HAP-NJ Board of Commissioners, employees, contractors, or other HAP-NJ 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 HAP-NJ 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)

Renting a unit from a prohibited family member. 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.

Admission of program abuse by an adult family member

The HAP-NJ 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 HAP-NJ may, at its discretion, impose any of the following remedies.

- The HAP-NJ may require the family to repay excess subsidy amounts paid by the HAP-NJ, as described earlier in this section.

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- The HAP-NJ 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 HAP-NJ may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The HAP-NJ may refer the family for state or federal criminal prosecution as described in section 14-II.E.

14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

Owner Reimbursement to the HAP-NJ

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the HAP-NJ any excess subsidy received. The HAP-NJ may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the HAP-NJ may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

HAP-NJ Policy

In cases where the owner has received excess subsidy, the HAP-NJ 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 HAP-NJ [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:

HAP-NJ 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 HAP-NJ

Charging a security deposit other than that specified in the family's lease

Charging the family for services that are provided to unassisted tenants at no extra charge

Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit

Knowingly accepting incorrect or excess housing assistance payments

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Offering bribes or illegal gratuities to the HAP-NJ Board of Commissioners, employees, contractors, or other HAP-NJ representatives

Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the HAP-NJ

Residing in the unit with an assisted family

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Remedies and Penalties

When the HAP-NJ determines that the owner has committed program abuse, the HAP-NJ 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 HAP-NJ programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

14-II.D. HAP-NJ-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of HAP-NJ staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a HAP-NJ staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the HAP-NJ personnel policy.

HAP-NJ-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 HAP-NJ

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by HAP-NJ staff [HCV GB. 22-12].

HAP-NJ Reimbursement to Family or Owner

The HAP-NJ must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from the HAP-NJ's administrative fee reserves [HCV GB p. 22-12].

Prohibited Activities

HAP-NJ Policy

Any of the following will be considered evidence of program abuse by HAP-NJ 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 HAP-NJ

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of HAP-NJ activities, policies, or practices

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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

HAP-NJ Policy

When the HAP-NJ determines that program abuse by an owner, family, or HAP-NJ staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the HAP-NJ 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 HAP-NJ may retain a portion of program fraud losses that the HAP-NJ recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The HAP-NJ must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the HAP-NJ to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the HAP-NJ 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 HAP-NJ related to the collection, these costs must be deducted from the amount retained by the HAP-NJ.

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Chapter 15

SPECIAL HOUSING TYPES
[24 CFR 982 Subpart M]

INTRODUCTION

The HAP-NJ may permit a family to use any of the special housing types discussed in this chapter. However, the HAP-NJ 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 HAP-NJ 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.

HAP-NJ Policy

Families will not be permitted to use any special housing types, unless use is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership

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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 HAP-NJ's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero-bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

15-I.C. HOUSING QUALITY STANDARDS (HQS)

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access*: Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety*: All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

  Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].
- *Sanitary Facilities*: At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.

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- *Space and Security*: An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

  Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

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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 HAP-NJ, a family member or live-in aide may reside with the elderly person or person with disabilities. The HAP-NJ must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the HAP-NJ 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 HAP-NJ 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 STANDARDS

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

> Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.
>
> The housing quality standards applicable to lead-based paint do not apply.

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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 HAP-NJ, a live-in aide may live in the group home with a person with disabilities. The HAP-NJ must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be zero- or one-bedroom, depending on the HAP-NJ'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 prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorata 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 prorata portion of the reasonable rent for the group home. In determining reasonable rent, the HAP-NJ should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15-III.C. HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

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- *Sanitary Facilities*: A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service*: Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security*: Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material*: To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood*: Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash
  - Vermin or rodent infestation, and
  - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

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PART IV: SHARED HOUSING

[24 CFR 982.615 through 982.618]

15-IV.A. OVERVIEW

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by the HAP-NJ, a live-in aide may reside with the family to care for a person with disabilities. The HAP-NJ must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

The prorata 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 prorata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the HAP-NJ should consider whether sanitary and food preparation areas are private or shared.

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15-IV.C. HOUSING QUALITY STANDARDS

The HAP-NJ may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family*: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security*: The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A zero-bedroom or one-bedroom unit may not be used for shared housing.

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PART V: COOPERATIVE HOUSING

[24 CFR 982.619]

15-V.A. OVERVIEW

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged "rent" a cooperative member is charged a "carrying charge."

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

15-V.C. HOUSING QUALITY STANDARDS

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

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PART VI: MANUFACTURED HOMES

[24 CFR 982.620 through 982.624]

15-VI.A. OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and the HAP-NJ must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. PHAs may, but are not required to, provide assistance for such families.

15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE

Family Income

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

Lease and HAP Contract

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

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15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

Payment Standards

The FMR for a manufactured home space is generally 40 percent of the published FMR for a two-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. The HAP-NJ may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

Utility Allowance

The HAP-NJ must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

Space Rent

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

Housing Assistance Payment

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

Rent Reasonableness

Initially, and annually thereafter the HAP-NJ must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The HAP-NJ 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 STANDARDS

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

Manufactured Home Tie-Down

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

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PART VII: HOMEOWNERSHIP

[24 CFR 982.625 through 982.643]

15-VII.A. OVERVIEW [24 CFR 982.625]

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option may be newly admitted or an existing participant in the HCV program. The HAP-NJ must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

There are two forms of homeownership assistance a HAP-NJ may offer under this option: monthly homeownership assistance payments, or a single down payment assistance grant. PHAs may choose to offer either or both forms of homeownership assistance, or choose not to offer either. If a HAP-NJ offers both forms of assistance, a family must choose which form of assistance to receive.

The HAP-NJ must offer either form of homeownership assistance if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of the HAP-NJ to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The HAP-NJ must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The HAP-NJ may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the HAP-NJ has otherwise opted not to implement a homeownership program.

The HAP-NJ 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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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 HAP-NJ may also establish additional initial requirements as long as they are described in the HAP-NJ administrative plan.

- The family must have been admitted to the Housing Choice Voucher program.
- The family must qualify as a first-time homeowner, or may be a cooperative member.
- The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2000, based on the income of adult family members who will own the home. The HAP-NJ may establish a higher income standard for families. However, a family that meets the federal minimum income requirement (but not the HAP-NJ's requirement) will be considered to meet the minimum income requirement if it can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.
- For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family.
- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, the HAP-NJ must grant an exemption from the employment requirement if the HAP-NJ determines that it is needed as a reasonable accommodation.
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option
- Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 CFR 982.631(c).

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15-VII.C. SELECTION OF FAMILIES [24 CFR 982.626]

Unless otherwise provided (under the homeownership option), the HAP-NJ may limit homeownership assistance to families or purposes defined by the HAP-NJ, and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in the HAP-NJ administrative plan.

If the HAP-NJ limits the number of families that may participate in the homeownership option, the HAP-NJ must establish a system by which to select families to participate.

15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]

In order for a unit to be eligible, the HAP-NJ must determine that the unit satisfies all of the following requirements:

- The unit must meet HUD's "eligible housing" requirements. The unit may not be any of the following:
  - A public housing or Indian housing unit;
  - A unit receiving Section 8 project-based assistance;
  - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
  - A college or other school dormitory;
  - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale.
- The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit must have been inspected by the HAP-NJ and by an independent inspector designated by the family.
- The unit must meet Housing Quality Standards (see Chapter 8).
- For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.

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- For HAP-NJ-owned units all of the following conditions must be satisfied:
  - The HAP-NJ informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and a HAP-NJ-owned unit is freely selected by the family without HAP-NJ pressure or steering;
  - The unit is not ineligible housing;
  - The HAP-NJ obtains the services of an independent agency to inspect the unit for compliance with HQS, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any HAP-NJ provided financing. All of these actions must be completed in accordance with program requirements.

The HAP-NJ must not approve the unit if the HAP-NJ has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

15-VII.E. ADDITIONAL HAP-NJ REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629]

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. The HAP-NJ 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 HAP-NJ, the HAP-NJ may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

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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 HAP-NJ. HUD suggests the following topics for the HAP-NJ-required pre-assistance counseling:

- Home maintenance (including care of the grounds);
- Budgeting and money management;
- Credit counseling;
- How to negotiate the purchase price of a home;
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- How to find a home, including information about homeownership opportunities, schools, and transportation in the HAP-NJ 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 HAP-NJ may adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families.

The HAP-NJ may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the HAP-NJ offers a program of ongoing counseling for participants in the homeownership option, the HAP-NJ shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If the HAP-NJ does not use a HUD-approved housing counseling agency to provide the counseling, the HAP-NJ should ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

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15-VII.G. HOME INSPECTIONS, CONTRACT OF SALE, AND HAP-NJ DISAPPROVAL OF SELLER [24 CFR 982.631]

Home Inspections

The HAP-NJ may not commence monthly homeownership assistance payments or provide down payment assistance grants for a family until the HAP-NJ has inspected the unit and has determined that the unit passes HQS.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

The HAP-NJ may not require the family to use an independent inspector selected by the HAP-NJ. The independent inspector may not be a HAP-NJ employee or contractor, or other person under control of the HAP-NJ. However, the HAP-NJ may establish standards for qualification of inspectors selected by families under the homeownership option.

The HAP-NJ may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with HQS.

Contract of Sale

Before commencement of monthly homeownership assistance payments or receipt of a down payment assistance grant, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the HAP-NJ 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 HAP-NJ may deny approval of a seller for the same reasons a HAP-NJ may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

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15-VII.H. FINANCING [24 CFR 982.632]

The HAP-NJ 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 HAP-NJ must establish policies describing these requirements in the administrative plan.

A HAP-NJ may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the HAP-NJ may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the HAP-NJ the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).
- The family must supply information to the HAP-NJ or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by the HAP-NJ or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify the HAP-NJ before moving out of the home.
- The family must notify the HAP-NJ if the family defaults on the mortgage used to purchase the home.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).

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15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than:

- Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
- Ten years, in all other cases.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different 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 HAP-NJ 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 HAP-NJ may pay the homeownership assistance payments directly to the family, or at the HAP-NJ's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the HAP-NJ must pay the excess directly to the family.

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Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family. However, a HAP-NJ may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

The HAP-NJ must adopt policies for determining the amount of homeownership expenses to be allowed by the HAP-NJ in accordance with HUD requirements.

Homeownership expenses (not including cooperatives) only include amounts allowed by the HAP-NJ 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 HAP-NJ allowance for maintenance expenses;
- The HAP-NJ allowance for costs of major repairs and replacements;
- The HAP-NJ 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 HAP-NJ 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.

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Homeownership expenses for a cooperative member may only include amounts allowed by the HAP-NJ 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 HAP-NJ allowance for maintenance expenses;
- The HAP-NJ allowance for costs of major repairs and replacements;
- The HAP-NJ 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 HAP-NJ 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.

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15-VII.L. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]

Subject to the restrictions on portability included in HUD regulations and HAP-NJ policies, a family may exercise portability if the receiving HAP-NJ is administering a voucher homeownership program and accepting new homeownership families. The receiving HAP-NJ may absorb the family into its voucher program, or bill the initial HAP-NJ.

The family must attend the briefing and counseling sessions required by the receiving HAP-NJ. The receiving HAP-NJ will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving HAP-NJ must promptly notify the initial HAP-NJ 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 HAP-NJ.

15-VII.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home.

The HAP-NJ may deny permission to move to a new unit with continued voucher assistance:

- If the HAP-NJ has insufficient funding to provide continued assistance.
- In accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- In accordance with the HAP-NJ's policy regarding number of moves within a 12-month period.

The HAP-NJ 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.

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15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]

At any time, the HAP-NJ 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 HAP-NJ 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.

The HAP-NJ 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.

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Chapter 16

PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes the HAP-NJ'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 HAP-NJ. This part describes policies for recovery of monies that the HAP-NJ has overpaid on behalf of families, or to owners, and describes the circumstances under which the HAP-NJ 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 HAP-NJ.

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 HAP-NJ will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the HAP-NJ's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes the HAP-NJ'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, and stalking; and maintaining the confidentiality of information obtained from victims.

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PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

The HAP-NJ will maintain administrative fee reserves, or unrestricted net assets (UNA) for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a HAP-NJ 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 UNA 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 HAP-NJ has not adequately administered its HCV program, HUD may prohibit use of funds in the UNA Account and may direct the HAP-NJ 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 HAP-NJ Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the UNA account without specific approval.

HAP-NJ Policy

Expenditures from the UNA account will be made in accordance with all applicable federal requirements. Expenditures will not exceed $10,000 per occurrence without the prior approval of the HAP-NJ's Board of Commissioners.

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PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

16-II.A. OVERVIEW

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow the HAP-NJ to adapt the program to local conditions. This part discusses how the HAP-NJ 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).

HAP-NJ Policy

Copies of the payment standard and utility allowance schedules are available for review in the HAP-NJ's offices during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

The HAP-NJ 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 HAP-NJ passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6 (see Section 6-I.G.).

16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from the HAP-NJ 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 HAP-NJ must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the HAP-NJ's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the HAP-NJ 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 HAP-NJ 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.

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Updating Payment Standards

When HUD updates its FMRs, the HAP-NJ must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the HAP-NJ to make further adjustments if it determines that rent burdens for assisted families in the HAP-NJ's jurisdiction are unacceptably high 24 CFR 982.503(g)].

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

Funding Availability: The HAP-NJ 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 HAP-NJ 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 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 HAP-NJ will consider increasing the payment standard. In evaluating rent burdens, the HAP-NJ will not include families renting a larger unit than their family unit size.

Quality of Units Selected: The HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 will be effective on October 1st of every year.

Exception Payment Standards [982.503(c)]

The HAP-NJ 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

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for all units of a given size, leased by program families in the exception area. Any HAP-NJ with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii), 24 CFR 982.505(d), Notice PIH 2010-26]

Unit-by-unit exceptions to the HAP-NJ'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 HAP-NJ's payment standard schedule.

When needed as a reasonable accommodation, the HAP-NJ may make an exception to the payment standard without HUD approval if the exception amount does not exceed 110 percent of the applicable FMR for the unit size [HCV GB 7-9]. The HAP-NJ may request HUD approval for an exception to the payment standard for a particular family if the required amount falls between 110 and 120 percent of the FMR.

HAP-NJ 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 HAP-NJ must determine that:

There is a shortage of affordable units that would be appropriate for the family;

The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and

The rent for the unit is reasonable.

"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]

If a substantial percentage of families have difficulty finding a suitable unit, the HAP-NJ may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the HAP-NJ 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 HAP-NJ 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;
- The HAP-NJ had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The HAP-NJ 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 HAP-NJ may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the HAP-NJ's jurisdiction within the FMR area.

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Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)]

The HAP-NJ must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]

A HAP-NJ-established utility allowance schedule is used in determining family share and HAP-NJ subsidy. The HAP-NJ 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 HAP-NJ 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 HAP-NJ must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to the HAP-NJ 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.

HAP-NJ Policy

The HAP-NJ has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before the HAP-NJ will apply this allowance to a family's rent and subsidy calculations.

Reasonable Accommodation

HCV program regulations require a HAP-NJ to approve a utility allowance amount higher than shown on the HAP-NJ's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the HAP-NJ will approve an allowance for air-conditioning, even if the HAP-NJ has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

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Utility Allowance Revisions

The HAP-NJ 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.

The HAP-NJ must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

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PART III: INFORMAL REVIEWS AND HEARINGS

16-III.A. OVERVIEW

Both applicants and participants have the right to disagree with, and appeal, certain decisions of the HAP-NJ that may adversely affect them. HAP-NJ decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of HAP-NJ 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

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a "minimum hearing requirement" [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements [*Federal Register* 60, no. 127 (3 July 1995): 34690].

Decisions Subject to Informal Review

The HAP-NJ 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 HAP-NJ 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 HAP-NJ
- General policy issues or class grievances
- A determination of the family unit size under the HAP-NJ subsidy standards
- A HAP-NJ determination not to approve an extension or suspension of a voucher term
- A HAP-NJ determination not to grant approval of the tenancy
- A HAP-NJ determination that the unit is not in compliance with the HQS
- A HAP-NJ determination that the unit is not in accordance with the HQS due to family size or composition

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HAP-NJ Policy

The HAP-NJ will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the HAP-NJ 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 HAP-NJ must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the HAP-NJ 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

HAP-NJ Policy

A request for an informal review must be made in writing and delivered to the HAP-NJ 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 HAP-NJ's denial of assistance.

The HAP-NJ must schedule and send written notice of the informal review within 10 business days of the family's request.

Informal Review Procedures [24 CFR 982.554(b)]

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 HAP-NJ.

Informal Review Decision [24 CFR 982.554(b)]

The HAP-NJ must notify the applicant of the HAP-NJ's final decision, including a brief statement of the reasons for the final decision.

HAP-NJ Policy

In rendering a decision, the HAP-NJ 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 HAP-NJ 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 HAP-NJ will uphold the decision to deny assistance.

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If the facts prove the grounds for denial, and the denial is discretionary, the HAP-NJ will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The HAP-NJ will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

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16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]

PHAs must offer an informal hearing for certain HAP-NJ determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the HAP-NJ's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the HAP-NJ's decisions related to the family's circumstances are in accordance with the law, HUD regulations and HAP-NJ policies.

The HAP-NJ is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

Decisions Subject to Informal Hearing

Circumstances for which the HAP-NJ 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 HAP-NJ utility allowance schedule
- A determination of the family unit size under the HAP-NJ's subsidy standards
- A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the HAP-NJ's subsidy standards, or the HAP-NJ determination to deny the family's request for exception from the standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under HAP-NJ 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 HAP-NJ
- General policy issues or class grievances
- Establishment of the HAP-NJ schedule of utility allowances for families in the program
- A HAP-NJ determination not to approve an extension or suspension of a voucher term

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- A HAP-NJ determination not to approve a unit or tenancy
- A HAP-NJ determination that a unit selected by the applicant is not in compliance with the HQS
- A HAP-NJ determination that the unit is not in accordance with HQS because of family size
- A determination by the HAP-NJ to exercise or not to exercise any right or remedy against an owner under a HAP contract

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ makes a decision that is subject to informal hearing procedures, the HAP-NJ 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 HAP-NJ 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 HAP-NJ'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.

HAP-NJ Policy

In cases where the HAP-NJ 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 HAP-NJ.

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 HAP-NJ's decision.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

A copy of the HAP-NJ's hearing procedures.

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Scheduling an Informal Hearing [24 CFR 982.555(d)]

When an informal hearing is required, the HAP-NJ must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

HAP-NJ Policy

A request for an informal hearing must be made in writing and delivered to the HAP-NJ 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 HAP-NJ's decision or notice to terminate assistance.

The HAP-NJ 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 HAP-NJ may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the HAP-NJ within 24 hours of the scheduled hearing date, excluding weekends and holidays. The HAP-NJ will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Pre-Hearing Right to Discovery [24 CFR 982.555(e)]

Participants and the HAP-NJ are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any HAP-NJ documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the HAP-NJ does not make the document available for examination on request of the family, the HAP-NJ may not rely on the document at the hearing.

The HAP-NJ hearing procedures may provide that the HAP-NJ must be given the opportunity to examine at the HAP-NJ offices before the hearing, any family documents that are directly relevant to the hearing. The HAP-NJ must be allowed to copy any such document at the HAP-NJ's expense. If the family does not make the document available for examination on request of the HAP-NJ, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

HAP-NJ 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 HAP-NJ documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

The HAP-NJ must be given an opportunity to examine at the HAP-NJ offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the HAP-NJ will automatically mail a letter to

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the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

Participant's Right to Bring Counsel **[24 CFR 982.555(e)(3)]**

At its own expense, 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 HAP-NJ, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

Attendance at the Informal Hearing

HAP-NJ Policy

Hearings may be attended by a hearing officer and the following applicable persons:

A HAP-NJ representative(s) and any witnesses for the HAP-NJ

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by the HAP-NJ 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 HAP-NJ's hearing procedures [24 CFR 982.555(4)(ii)].

HAP-NJ Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

Evidence **[24 CFR 982.555(e)(5)]**

The HAP-NJ 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.

HAP-NJ 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

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Documentary evidence: a writing which is relevant to the case, for example, a letter written to the HAP-NJ. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either the HAP-NJ or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

Hearing Officer's Decision **[24 CFR 982.555(e)(6)]**

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family.

HAP-NJ Policy

In rendering a decision, the hearing officer will consider the following matters:

HAP-NJ Notice to the Family: The hearing officer will determine if the reasons for the HAP-NJ's decision are factually stated in the Notice.

Discovery: The hearing officer will determine if the HAP-NJ and the family were given the opportunity to examine any relevant documents in accordance with HAP-NJ policy.

HAP-NJ Evidence to Support the HAP-NJ Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the HAP-NJ'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 HAP-NJ policies. If the grounds for termination are not specified in the regulations or in compliance with HAP-NJ policies, then the decision of the HAP-NJ will be overturned.

The hearing officer will issue a written decision to the family and the HAP-NJ no later than 10 business days after the hearing. The report will contain the following information:

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Hearing information:

Name of the participant;

Date, time and place of the hearing;

Name of the hearing officer;

Name of the HAP-NJ 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 HAP-NJ's decision.

Order: The hearing report will include a statement of whether the HAP-NJ's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the HAP-NJ 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 HAP-NJ to restore the participant's program status.

Procedures for Rehearing or Further Hearing

HAP-NJ Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the HAP-NJ will take effect and another hearing will not be granted.

HAP-NJ Notice of Final Decision **[24 CFR 982.555(f)]**

The HAP-NJ is not bound by the decision of the hearing officer for matters in which the HAP-NJ 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 HAP-NJ determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the HAP-NJ must promptly notify the family of the determination and the reason for the determination.

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HAP-NJ Policy

The HAP-NJ will mail a "Notice of Final Decision" including the hearing officer's report to the participant and their representative. This notice will be sent by first-class mail, postage pre-paid. The participant will be mailed the original "Notice of Final Decision." A copy of the "Notice of Final Decision" will be maintained in the HAP-NJ's file.

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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 HAP-NJ 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 HAP-NJ 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)]

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 HAP-NJ 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 HAP-NJ receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the HAP-NJ 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 HAP-NJ with a copy of the written request for appeal and the proof of mailing.

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ with a copy of the written request for appeal within 10 business days of sending the request to the USCIS.

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The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the HAP-NJ, of its decision. When the USCIS notifies the HAP-NJ of the decision, the HAP-NJ must notify the family of its right to request an informal hearing.

HAP-NJ Policy

The HAP-NJ will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the HAP-NJ provide a hearing. The request for a hearing must be made either within 30 days of receipt of the HAP-NJ 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

The HAP-NJ must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

Evidence

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the HAP-NJ 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.

HAP-NJ 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 HAP-NJ documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the HAP-NJ, and to confront and cross-examine all witnesses on whose testimony or information the HAP-NJ relies.

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Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the HAP-NJ, as may be agreed upon by the two parties.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The HAP-NJ may, but is not required to provide a transcript of the hearing.

HAP-NJ Policy

The HAP-NJ will not provide a transcript of an audio taped hearing.

Hearing Decision

The HAP-NJ 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 HAP-NJ provide a hearing. The request for a hearing must be made either within 30 days of receipt of the HAP-NJ 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 HAP-NJ must retain for a minimum of 5 years the following documents that may have been submitted to the HAP-NJ by the family, or provided to the HAP-NJ as part of the USCIS appeal or the HAP-NJ informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

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PART IV: OWNER OR FAMILY DEBTS TO THE HAP-NJ

16-IV.A. OVERVIEW

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the HAP-NJ [24 CFR 982.54]. This part describes the HAP-NJ's policies for recovery of monies owed to the HAP-NJ by families or owners.

HAP-NJ Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the HAP-NJ holds the owner or participant liable to return any overpayments to the HAP-NJ.

The HAP-NJ 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 HAP-NJ, the HAP-NJ will utilize other available collection alternatives including, but not limited to, the following:

Collection agencies

Small claims court

Civil law suit

State income tax set-off program

16-IV.B. REPAYMENT POLICY

Owner Debts to the HAP-NJ

HAP-NJ Policy

Any amount due to the HAP-NJ by an owner must be repaid by the owner within 30 days of the HAP-NJ 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 HAP-NJ 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 HAP-NJ may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by the HAP-NJ.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the HAP-NJ will ban the owner from future participation in the program and pursue other modes of collection.

Family Debts to the HAP-NJ

HAP-NJ Policy

Any amount owed to the HAP-NJ by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, the HAP-NJ will offer to enter into a repayment agreement in accordance with the policies below.

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If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the HAP-NJ will terminate assistance in accordance with the policies in Chapter 12 and pursue other modes of collection.

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 HAP-NJ in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

General Repayment Agreement Guidelines for Families

Down Payment Requirement

HAP-NJ Policy

Before executing a repayment agreement with a family, the HAP-NJ will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the HAP-NJ that a down payment of 10 percent would impose an undue hardship, the HAP-NJ may, in its sole discretion, require a lesser percentage or waive the requirement.

Payment Thresholds

Notice PIH 2010-19 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 2010-19 acknowledges that PHAs have the discretion to establish "thresholds and policies" for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

HAP-NJ Policy

The HAP-NJ 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 36 months.

Amounts between $2,000 and $2,999 must be repaid within 30 months.

Amounts between $1,000 and $1,999 must be repaid within 24 months.

Amounts under $1,000 must be repaid within 12 months.

If a family can provide evidence satisfactory to the HAP-NJ that the threshold applicable to the family's debt would impose an undue hardship, the HAP-NJ may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, the HAP-NJ will consider all relevant information, including the following:

The amount owed by the family to the HAP-NJ

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

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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

HAP-NJ Policy

Any repayment agreement between the HAP-NJ and a family must be signed and dated by the HAP-NJ and by the head of household and spouse/cohead (if applicable).

Due Dates

HAP-NJ Policy

All payments are due by the close of business on the last day of the month. If the last day of the month does not fall on a business day, the due date is the close of business on the first business day after the last day of the month.

Late or Missed Payments

HAP-NJ 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 HAP-NJ, the HAP-NJ will 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 HAP-NJ will terminate assistance in accordance with the policies in Chapter 12.

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 HAP-NJ will terminate assistance in accordance with the policies in Chapter 12.

No Offer of Repayment Agreement

HAP-NJ Policy

The HAP-NJ generally will 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.

Repayment Agreements Involving Improper Payments

Notice PIH 2010-19 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 HAP-NJ 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 HAP-NJ 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

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- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance

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PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

16-V.A. OVERVIEW

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure HAP-NJ 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 HAP-NJ 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]

PHAs must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by HAP-NJ board resolution and signed by the HAP-NJ executive director. If the HAP-NJ 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 HAP-NJ fiscal year. HUD will assess such PHAs annually if the HAP-NJ elects to have its performance assessed on an annual basis; or is designated as "troubled" [24 CFR 985.105].

Failure of a HAP-NJ to submit its SEMAP certification within the required time frame will result in an overall performance rating of "troubled."

A HAP-NJ's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the HAP-NJ's SEMAP certification, HUD will rate the HAP-NJ'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 HAP-NJ or the Independent Auditor must select an unbiased

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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 HAP-NJ's certification on the indicator due to the HAP-NJ'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 HAP-NJ that expends less than $300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

SEMAP Indicators
Indicator 1: Selection from the waiting list **Maximum Score: 15** • This indicator shows whether the HAP-NJ has written policies in its administrative plan for selecting applicants from the waiting list and whether the HAP-NJ 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 HAP-NJ's written policies, according to the HAP-NJ's quality control sample.
Indicator 2: Rent reasonableness **Maximum Score: 20** • This indicator shows whether the HAP-NJ 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 HAP-NJ follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the HAP-NJ's quality control sample.
Indicator 3: Determination of adjusted income **Maximum Score: 20** • This indicator measures whether the HAP-NJ 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 HAP-NJ's quality control sample.
Indicator 4: Utility allowance schedule **Maximum Score: 5** • This indicator shows whether the HAP-NJ maintains an up-to-date utility allowance schedule.

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- Points are based on whether the HAP-NJ has reviewed the utility allowance schedule and adjusted it when required, according to the HAP-NJ's certification.

Indicator 5: HQS quality control inspections
Maximum Score: 5

- This indicator shows whether a HAP-NJ supervisor reinspects a sample of units under contract during the HAP-NJ fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control reinspections were completed, according to the HAP-NJ's certification.

Indicator 6: HQS enforcement
Maximum Score: 10

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any HAP-NJ-approved extension.
- Points are based on whether the HAP-NJ corrects all HQS deficiencies in accordance with required time frames, according to the HAP-NJ's certification.

Indicator 7: Expanding housing opportunities
Maximum Points: 5

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the HAP-NJ 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 HAP-NJ'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 HAP-NJ has adopted and implemented written policies in accordance with SEMAP requirements, according to the HAP-NJ's certification.

Indicator 8: FMR limit and payment standards
Maximum Points: 5 points

- This indicator shows whether the HAP-NJ has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the HAP-NJ's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the HAP-NJ has appropriately adopted a payment standard schedule(s), according to the HAP-NJ's certification.

Indicator 9: Annual reexaminations
Maximum Points: 10

- This indicator shows whether the HAP-NJ 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
Maximum Points: 5

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- This indicator shows whether the HAP-NJ correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

Indicator 11: Pre-contract HQS inspections
Maximum Points: 5

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

Indicator 12: Annual HQS inspections
Maximum Points: 10

- This indicator shows whether the HAP-NJ 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 HAP-NJ enters HAP contracts for the number of units or funding reserved under ACC for at least one year.
- Points are based on the percent of units leased during the last completed HAP-NJ fiscal year, or the percent of allocated budget authority that has been expended by the HAP-NJ, according to data from the HAP-NJ's last year-end operating statement that is recorded in HUD's accounting system.

Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances
Maximum Points: 10

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether the HAP-NJ 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 HAP-NJ 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

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- 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 50 percentile rent, starting with the second full HAP-NJ 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.

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PART VI: RECORD KEEPING

16-VI.A. OVERVIEW

The HAP-NJ 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 HAP-NJ 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 HAP-NJ must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the HAP-NJ 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 HAP-NJ budget and financial statements for the program;
- Records to document the basis for HAP-NJ determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

16-VI.C. RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

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HAP-NJ Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized HAP-NJ staff.

HAP-NJ 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]

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 HAP-NJ may release the information collected.

Upfront Income Verification (UIV) Records

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data.*

HAP-NJ Policy

Prior to utilizing HUD's EIV system, the HAP-NJ will adopt and implement EIV security procedures required by HUD.

Criminal Records

The HAP-NJ may only disclose the criminal conviction records which the HAP-NJ receives from a law enforcement agency to officers or employees of the HAP-NJ, or to authorized representatives of the HAP-NJ who have a job-related need to have access to the information [24 CFR 5.903(e)].

The HAP-NJ must establish and implement a system of records management that ensures that any criminal record received by the HAP-NJ 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 HAP-NJ action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The HAP-NJ must establish and implement a system of records management that ensures that any sex offender registration information received by the HAP-NJ 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 HAP-NJ action without institution of a challenge or final

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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 HAP-NJ other than under 24 CFR 5.905.

Medical/Disability Records

PHAs are not permitted to inquire about the nature or extent of a person's disability. The HAP-NJ may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the HAP-NJ receives a verification document that provides such information, the HAP-NJ should not place this information in the tenant file. The HAP-NJ should destroy the document.

Documentation of Domestic Violence, Dating Violence, or Stalking

For requirements and HAP-NJ policies related to management of documentation obtained from victims of domestic violence, dating violence, or stalking, see section 16-IX.E.

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PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

The HAP-NJ has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the HAP-NJ is subject to.

16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]

The HAP-NJ must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

HAP-NJ Policy

The HAP-NJ will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]

At least quarterly, the HAP-NJ must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If the HAP-NJ obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the HAP-NJ 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 HAP-NJ must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the HAP-NJ 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.

HAP-NJ Policy

The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, the HAP-NJ is not providing such a report.

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PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

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 982.314(e)(1) and 982.454]. Insufficient funding may also impact the HAP-NJ's ability to issue vouchers to families on the waiting list. This part discusses the methodology the HAP-NJ will use to determine whether or not the HAP-NJ has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

16-VIII.B. METHODOLOGY

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ'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 HAP-NJ 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 HAP-NJ cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the HAP-NJ will be considered to have insufficient funding.

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PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

16-IX.A. OVERVIEW

The Violence against Women Act of 2005 (VAWA) provides special protections for victims of domestic violence, dating violence, and stalking 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 take precedence over VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and HAP-NJ policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and HAP-NJ 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"; 10-I.A, "Allowable Moves"; 10-I.B, "Restrictions on Moves"; 12-II.E, "Terminations Related to Domestic Violence, Dating Violence, or Stalking"; and 12-II.F, "Termination Notice."

16-IX.B. DEFINITIONS [24 CFR 5.2003]

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *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 of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- The term *immediate family member* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
  - Any other person living in the household of that person and related to that person by blood and marriage.

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

16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]

Notification to Public

The HAP-NJ adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

HAP-NJ Policy

The HAP-NJ will post the following information regarding VAWA in its offices. It will also make the information readily available to anyone who requests it.

A summary of the rights and protections provided by VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, or stalking (see sample notices in Exhibits 16-1 and 16-2)

The definitions of *domestic violence, dating violence*, and *stalking* provided in VAWA (included in Exhibits 16-1 and 16-2)

An explanation of the documentation that the HAP-NJ may require from an individual who claims the protections provided by VAWA (included in Exhibits 16-1 and 16-2)

A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking

A statement of the HAP-NJ's obligation to keep confidential any information that it receives from a victim unless (a) the HAP-NJ has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibits 16-1 and 16-2)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

Contact information for local victim advocacy groups or service providers

Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]

PHAs are required to inform program participants of their rights under VAWA, including their right to confidentiality and the limits thereof. Since VAWA provides protections for applicants as well as participants, PHAs may elect to provide the same information to applicants.

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HAP-NJ Policy

The HAP-NJ will provide all applicants with information about VAWA at the time they are briefed for housing assistance.

Applicants and participants can request a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, and Stalking.

Notification to Owners and Managers [24 CFR 5.2005(a)(2)]

PHAs are required to notify owners and managers participating in the HCV program of their rights and obligations under VAWA.

HAP-NJ Policy

The HAP-NJ will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the HCV program.

16-IX.D. DOCUMENTATION [24 CFR 5.2007]

A HAP-NJ presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, stalking, 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 HAP-NJ may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the HAP-NJ'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-50066, Certification of Domestic Violence, Dating Violence, or Stalking), which must include the name of the perpetrator

(2) A federal, state, tribal, territorial, or local police report or court record

(3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The HAP-NJ 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].

HAP-NJ Policy

Any request for documentation of domestic violence, dating violence, or stalking will 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.

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The HAP-NJ may, in its discretion, extend the deadline for 10 business days. Any extension granted by the HAP-NJ will be in writing.

Conflicting Documentation [24 CFR 5.2007(e)]

In cases where the HAP-NJ 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 HAP-NJ may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The HAP-NJ must honor any court orders issued to protect the victim or to address the distribution of property.

HAP-NJ Policy

If presented with conflicting certification documents (two or more forms HUD-50066) from members of the same household, the HAP-NJ 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(b)(2) or (3) and by following any HUD guidance on how such determinations should be made.

Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]

The HAP-NJ 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).

HAP-NJ Policy

If the HAP-NJ accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, or stalking, the HAP-NJ 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 HAP-NJ 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 HAP-NJ may allow, the HAP-NJ may deny relief for protection under VAWA.

16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]

All information provided to the HAP-NJ regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that the HAP-NJ (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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HAP-NJ Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the HAP-NJ 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 TO HOUSING CHOICE VOUCHER APPLICANTS AND TENANTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)

This sample notice was adapted from a notice prepared by the National Housing Law Project.

A federal law that went into effect in 2006 protects individuals who are victims of domestic violence, dating violence, and stalking. The name of the law is the Violence against Women Act, or "VAWA." This notice explains your rights under VAWA.

Protections for Victims

If you are eligible for a Section 8 voucher, the housing authority cannot deny you rental assistance solely because you are a victim of domestic violence, dating violence, or stalking.

If you are the victim of domestic violence, dating violence, or stalking, you cannot be terminated from the Section 8 program or evicted based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, or stalking that are caused by a member of your household or a guest can't be the reason for evicting you or terminating your rental assistance if you were the victim of the abuse.

Reasons You Can Be Evicted

You can be evicted and your rental assistance can be terminated if the housing authority or your landlord can show there is an *actual* and *imminent* (immediate) threat to other tenants or employees at the property if you remain in your housing. Also, you can be evicted and your rental assistance can be terminated for serious or repeated lease violations that are not related to the domestic violence, dating violence, or stalking committed against you. The housing authority and your landlord cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

Removing the Abuser from the Household

Your landlord may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the assisted unit. Also, the housing authority can terminate the abuser's Section 8 rental assistance while allowing you to continue to receive assistance. If the landlord or housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, your landlord must follow federal, state, and local eviction procedures.

Moving to Protect Your Safety

The housing authority may permit you to move and still keep your rental assistance, even if your current lease has not yet expired. The housing authority may require that you be current on your rent or other obligations in the housing choice voucher program. The housing authority may ask you to provide proof that you are moving because of incidences of abuse.

Proving That You Are a Victim of Domestic Violence, Dating Violence, or Stalking

The housing authority and your landlord can ask you to prove or "certify" that you are a victim of domestic violence, dating violence, or stalking. The housing authority or your landlord must give you at least 14 business days (i.e., Saturdays, Sundays, and holidays do not count) to

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provide this proof. The housing authority and your landlord are free to extend the deadline. There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority or your landlord. The form will ask for your name, the name of your abuser, the abuser's relationship to you, the date, time, and location of the incident of violence, and a description of the violence.
- Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing "under penalty of perjury."
- Provide a police or court record, such as a protective order.

If you fail to provide one of these documents within the required time, the landlord may evict you, and the housing authority may terminate your rental assistance.

Confidentiality

The housing authority and your landlord must keep confidential any information you provide about the violence against you, unless:

- You give written permission to the housing authority or your landlord to release the information.
- Your landlord needs to use the information in an eviction proceeding, such as to evict your abuser.
- A law requires the housing authority or your landlord to release the information.

If release of the information would put your safety at risk, you should inform the housing authority and your landlord.

VAWA and Other Laws

VAWA does not limit the housing authority's or your landlord's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, or stalking.

For Additional Information

If you have any questions regarding VAWA, please contact _____ at _____.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

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VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

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

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

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EXHIBIT 16-2: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER OWNERS AND MANAGERS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)

This sample notice was adapted from a notice prepared by the National Housing Law Project.

A federal law that went into effect in 2006 protects individuals who are victims of domestic violence, dating violence, and stalking. The name of the law is the Violence against Women Act, or "VAWA." This notice explains your obligations under VAWA.

Protections for Victims

You cannot refuse to rent to an applicant solely because he or she is a victim of domestic violence, dating violence, or stalking.

You cannot evict a tenant who is the victim of domestic violence, dating violence, or stalking based on acts or threats of violence committed against the victim. Also, criminal acts directly related to the domestic violence, dating violence, or stalking that are caused by a household member or guest cannot be cause for evicting the victim of the abuse.

Permissible Evictions

You can evict a victim of domestic violence, dating violence, or stalking if you can demonstrate that there is an *actual and imminent* (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, or stalking. You cannot hold a victim of domestic violence, dating violence, or stalking to a more demanding standard than you hold tenants who are not victims.

Removing the Abuser from the Household

You may bifurcate (split) the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

Certification of Domestic Violence, Dating Violence, or Stalking

If a tenant asserts VAWA's protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, or stalking. You are not required to demand official documentation and may rely upon the victim's statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

- A completed, signed HUD-approved certification form. The most recent form is HUD-50066. This form is available at the housing authority or online at http://www.hud.gov/offices/adm/hudclips/forms/hud5.cfm.
- A statement from a victim service provider, attorney, or medical professional who has helped the victim address incidents of domestic violence, dating violence, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both the victim and the professional must sign the statement under penalty of perjury.

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- A police or court record, such as a protective order.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

Confidentiality

You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, or stalking. You cannot enter the information into a shared database or reveal it to outside entities unless:

- The tenant provides written permission releasing the information.
- The information is required for use in an eviction proceeding, such as to evict the abuser.
- Release of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

VAWA and Other Laws

VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, or stalking.

Additional Information

- If you have any questions regarding VAWA, please contact _____.
- HUD Notice PIH 2006-42 contains detailed information regarding VAWA's certification requirements. The notice is available at http://www.hud.gov/offices/adm/hudclips/notices/pih/06pihnotices.cfm.
- For a discussion of VAWA's housing provisions, see the preamble to the final VAWA rule, which is available at http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf.

Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

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VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

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

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

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Chapter 17

PROJECT-BASED VOUCHERS

INTRODUCTION

This chapter describes HUD regulations and HAP-NJ 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 HAP-NJ will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the HAP-NJ's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the HAP-NJ 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.

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PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW [24 CFR 983.5]

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its voucher program budget authority and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the HAP-NJ's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

HAP-NJ Policy

The HAP-NJ will operate a project-based voucher program using up to 20 percent of its budget authority for project-based assistance.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the HAP-NJ is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, the HAP-NJ is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC [24 CFR 983.6].

17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the HAP-NJ 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.

HAP-NJ Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the HAP-NJ policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.

17-I.C. RELOCATION REQUIREMENTS [24 CFR 983.7]

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. 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

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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 HAP-NJ to ensure the owner complies with these requirements.

17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]

The HAP-NJ 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 HAP-NJ must comply with the HAP-NJ 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

17-II.A. OVERVIEW

The HAP-NJ must describe the procedures for owner submission of PBV proposals and for HAP-NJ selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the HAP-NJ 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, FR Notice 11/24/08], and meets the site selection standards [24 CFR 983.57]. The HAP-NJ 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)]

The HAP-NJ must select PBV proposals in accordance with the selection procedures in the HAP-NJ administrative plan. The HAP-NJ must select PBV proposals by either of the following two methods.

- HAP-NJ request for PBV Proposals. The HAP-NJ may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the HAP-NJ request. The HAP-NJ 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 HAP-NJ may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]

HAP-NJ 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 HAP-NJ. 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 HAP-NJ request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

HAP-NJ Policy

HAP-NJ Request for Proposals for Rehabilitated and Newly Constructed Units

The HAP-NJ will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspapers and trade journals.

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Star Ledger and Courier News

In addition, the HAP-NJ will post the RFP and proposal submission and rating and ranking procedures on its electronic web site.

The HAP-NJ 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 HAP-NJ estimates that it will be able to assist under the funding the HAP-NJ is making available. Proposals will be due in the HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ will rate partially assisted projects on the percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

<u>HAP-NJ Requests for Proposals for Existing Housing Units</u>

The HAP-NJ will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals.

Star Ledger and Courier News

In addition, the HAP-NJ will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site.

The HAP-NJ will periodically 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 HAP-NJ estimates that it will be able to assist under the funding the HAP-NJ 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;

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Extent to which the project furthers the HAP-NJ 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.

HAP-NJ Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

The HAP-NJ 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 HAP-NJ may periodically advertise that it is accepting proposals, in the following newspapers and trade journals:

Star Ledger and Courier News

In addition to, or in place of advertising, the HAP-NJ 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 HAP-NJ will evaluate each proposal on its merits using the following factors:

Extent to which the project furthers the HAP-NJ 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.

HAP-NJ-Owned Units [24 CFR 983.51(e) and 983.59]

A HAP-NJ-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 HAP-NJ-owned units were appropriately selected based on the selection procedures specified in the HAP-NJ administrative plan. If the HAP-NJ selects a proposal for housing that is owned or controlled by the HAP-NJ, the HAP-NJ must identify the entity that will review the HAP-NJ proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of HAP-NJ-owned units, the initial contract rent must be approved by an independent entity based on an appraisal by a licensed, state-certified appraiser. In addition, housing quality standards inspections must be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the HAP-NJ jurisdiction (unless the HAP-NJ is itself the unit of general local

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government or an agency of such government) or another HUD-approved public or private independent entity.

HAP-NJ Policy

The HAP-NJ may submit a proposal for project-based housing that is owned or controlled by the HAP-NJ. If the proposal for HAP-NJ-owned housing is selected, the HAP-NJ will use an independent entity to review the HAP-NJ selection and to administer the PBV program. The HAP-NJ will obtain HUD approval of an independent entity prior to selecting the proposal for HAP-NJ-owned housing.

The HAP-NJ may only compensate the independent entity and appraiser from HAP-NJ ongoing administrative fee income (including amounts credited to the administrative fee reserve). The HAP-NJ may not use other program receipts to compensate the independent entity and appraiser for their services. The HAP-NJ, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

HAP-NJ Notice of Owner Selection [24 CFR 983.51(d)]

The HAP-NJ 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.

HAP-NJ Policy

Within 10 business days of the HAP-NJ making the selection, the HAP-NJ will notify the selected owner in writing of the owner's selection for the PBV program. The HAP-NJ 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 HAP-NJ will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers and trade journals the HAP-NJ used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The HAP-NJ will also post the notice of owner selection on its electronic web site.

The HAP-NJ will make available to any interested party its rating and ranking sheets and documents that identify the HAP-NJ 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 HAP-NJ will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The HAP-NJ will make these documents available for review at the HAP-NJ 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 HAP-NJ 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

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housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of HAP-NJ selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

The HAP-NJ must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The HAP-NJ choice of housing type must be reflected in its solicitation for proposals.

17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

Ineligible Housing Types [24 CFR 983.53]

The HAP-NJ 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 HAP-NJ may not attach or pay PBV assistance for a unit occupied by an owner and the HAP-NJ 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.

Subsidized Housing [24 CFR 983.54]

A HAP-NJ may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that a HAP-NJ 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 HAP-NJ in accordance with HUD requirements.

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17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, FR Notice 11/24/08, and FR Notice 7/9/10]

The HAP-NJ 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.

The HAP-NJ must submit the necessary documentation to HUD for a subsidy layering review. Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies (defined by HUD as qualified housing credit agencies, or HCAs), the HAP-NJ may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD, or an independent entity approved by HUD, has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. 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.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT

25 Percent per Project Cap [24 CFR 983.56(a), FR Notice 11/24/08]

In general, the HAP-NJ 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 25 percent of the number of dwelling units (assisted or unassisted) in the project.

Exceptions to 25 Percent per Project Cap [24 CFR 983.56(b), FR Notice 11/24/08]

Exceptions are allowed and PBV units are not counted against the 25 percent per project cap if:

- The units are in a single-family building (one to four units);
- The units are *excepted units* in a multifamily building because they are specifically made available for elderly or disabled families or families receiving supportive services (also known as *qualifying families*).

PHAs must include in the HAP-NJ administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A HAP-NJ may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

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If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the HAP-NJ administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

The HAP-NJ must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. The HAP-NJ administrative plan must state the form and frequency of such monitoring.

HAP-NJ Policy

The HAP-NJ will provide PBV assistance for excepted units.

Promoting Partially-Assisted Buildings [24 CFR 983.56(c)]

A HAP-NJ may establish local requirements designed to promote PBV assistance in partially assisted buildings. A *partially assisted building* is a building in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

A HAP-NJ may establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single-family building. A HAP-NJ may also determine not to provide PBV assistance for excepted units, or the HAP-NJ may establish a per-building cap of less than 25 percent.

HAP-NJ Policy:

The HAP-NJ will provide assistance for excepted units.

17-II.G. SITE SELECTION STANDARDS

Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]

The HAP-NJ 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 HAP-NJ has 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 HAP-NJ Plan under 24 CFR 903 and the HAP-NJ administrative plan.

In addition, prior to selecting a proposal, the HAP-NJ must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

HAP-NJ Policy

It is the HAP-NJ goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the HAP-NJ will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

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However, the HAP-NJ will grant exceptions to the 20 percent standard where the HAP-NJ 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)]

The HAP-NJ may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;

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- The site must not be located in an area of minority concentration unless the HAP-NJ determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

17-II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]

The HAP-NJ activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The HAP-NJ 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 HAP-NJ may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the HAP-NJ, 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 HAP-NJ must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The HAP-NJ 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 STANDARDS [24 CFR 983.101]

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, 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 HAP-NJ must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

17-III.D. INSPECTING UNITS

Pre-selection Inspection [24 CFR 983.103(a)]

The HAP-NJ must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the HAP-NJ must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the HAP-NJ may not execute the HAP contract until the units fully comply with HQS.

Pre-HAP Contract Inspections [24 CFR 983.103(b)]

The HAP-NJ must inspect each contract unit before execution of the HAP contract. The HAP-NJ may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

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Turnover Inspections [24 CFR 983.103(c)]

Before providing assistance to a new family in a contract unit, the HAP-NJ must inspect the unit. The HAP-NJ may not provide assistance on behalf of the family until the unit fully complies with HQS.

Annual Inspections [24 CFR 983.103(d)]

At least annually during the term of the HAP contract, the HAP-NJ must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this annual inspection requirement.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, the HAP-NJ must reinspect 100 percent of the contract units in the building.

Other Inspections [24 CFR 983.103(e)]

The HAP-NJ must inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The HAP-NJ must take into account complaints and any other information coming to its attention in scheduling inspections.

The HAP-NJ must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting HAP-NJ supervisory quality control HQS inspections, the HAP-NJ should include a representative sample of both tenant-based and project-based units.

Inspecting HAP-NJ-Owned Units [24 CFR 983.103(f)]

In the case of HAP-NJ-owned units, the inspections must be performed by an independent agency designated by the HAP-NJ and approved by HUD. The independent entity must furnish a copy of each inspection report to the HAP-NJ and to the HUD field office where the project is located. The HAP-NJ 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 HAP-NJ-owner.

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PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS

17-IV.A. OVERVIEW [24 CFR 983.151]

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT

In order to offer PBV assistance in rehabilitated or newly constructed units, the HAP-NJ must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(a)].

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and the HAP-NJ agrees that upon timely completion of such development in accordance with the terms of the Agreement, the HAP-NJ will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(b)].

Content of the Agreement [24 CFR 983.152(c)]

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the HAP-NJ, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.

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Execution of the Agreement [24 CFR 983.153, FR Notice 11/24/08]

The Agreement must be executed promptly after HAP-NJ notice of proposal selection to the selected owner. Generally, the HAP-NJ may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the HAP-NJ may not enter into the Agreement until the environmental review is completed and the HAP-NJ has received environmental approval. However, the HAP-NJ does not need to conduct a subsidy layering review in the case of a HAP contract for an existing structure 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.

HAP-NJ Policy

The HAP-NJ 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. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The HAP-NJ must monitor compliance with labor standards.

Equal Opportunity [24 CFR 983.154(c)]

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

Owner Disclosure [24 CFR 983.154(d) and (e)]

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

17-IV.D. COMPLETION OF HOUSING

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

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Evidence of Completion [24 CFR 983.155(b)]

At a minimum, the owner must submit the following evidence of completion to the HAP-NJ in the form and manner required by the HAP-NJ:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the HAP-NJ's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ will specify any additional documentation requirements in the Agreement to enter into HAP contract.

HAP-NJ Acceptance of Completed Units [24 CFR 983.156]

Upon notice from the owner that the housing is completed, the HAP-NJ must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. The HAP-NJ 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 HAP-NJ must not enter into the HAP contract.

If the HAP-NJ determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the HAP-NJ must submit the HAP contract for execution by the owner and must then execute the HAP contract.

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PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

17-V.A. OVERVIEW

The HAP-NJ must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].

17-V.B. HAP CONTRACT REQUIREMENTS

Contract Information [24 CFR 983.203]

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will exceed the 25 percent per project cap, which will be set-aside for occupancy by qualifying families; and
- The initial rent to owner for the first 12 months of the HAP contract term.

Execution of the HAP Contract [24 CFR 983.204]

The HAP-NJ may not enter into a HAP contract until each contract unit has been inspected and the HAP-NJ has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract must be executed promptly after the HAP-NJ selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the HAP-NJ 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.

HAP-NJ Policy

For existing housing, the HAP contract will be executed within 10 business days of the HAP-NJ determining that all units pass HQS.

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For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of the HAP-NJ determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

Term of HAP Contract [FR Notice 11/24/08]

The HAP-NJ may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 15 years.

HAP-NJ Policy

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At any time before expiration of the HAP contract, the HAP-NJ may extend the term of the contract for an additional term of up to 15 years if the HAP-NJ determines an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. 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.

HAP-NJ Policy

When determining whether or not to extend an expiring PBV contract, the HAP-NJ 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 HAP-NJ [24 CFR 983.205(c)]

The HAP contract must provide that the term of the HAP-NJ's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the HAP-NJ in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the HAP-NJ may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

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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 HAP-NJ. In this case, families living in the contract units must be offered tenant-based assistance.

Remedies for HQS Violations [24 CFR 983.207(b)]

The HAP-NJ may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If the HAP-NJ determines that a contract does not comply with HQS, the HAP-NJ 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.

HAP-NJ Policy

The HAP-NJ will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

17-V.C. AMENDMENTS TO THE HAP CONTRACT

Substitution of Contract Units [24 CFR 983.206(a)]

At the HAP-NJ's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Before any such substitution can take place, the HAP-NJ must inspect the proposed unit and determine the reasonable rent for the unit.

Addition of Contract Units [24 CFR 983.206(b)]

At the HAP-NJ's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per building and on the overall size of the HAP-NJ's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same building. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

HAP-NJ Policy

The HAP-NJ will consider adding contract units to the HAP contract when the HAP-NJ 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.

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17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.206(c) and 983.302(e)]

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.209]

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the HAP-NJ, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and
- The family does not own or have any interest in the contract unit.

17-V.F. ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(a)]

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the HAP-NJ 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 HAP-NJ may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

HAP-NJ Policy

The HAP-NJ will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The HAP-NJ 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 HAP-NJ, the HAP contract may provide for vacancy payments to the owner for a HAP-NJ-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 HAP-NJ 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).

HAP-NJ Policy

The HAP-NJ will decide on a case-by-case basis if the HAP-NJ will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

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PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17-VI.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

The HAP-NJ may select families for the PBV program from those who are participants in the HAP-NJ'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 and the HAP-NJ, 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 HAP-NJ's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. An applicant family must also meet HUD requirements related to current or past criminal activity.

HAP-NJ Policy

The HAP-NJ will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3.

In-Place Families [24 CFR 983.251(b)]

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the HAP-NJ 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 HAP-NJ's waiting list. Once the family's continued eligibility is determined (the HAP-NJ 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 HAP-NJ 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.

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17-VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]

The HAP-NJ 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 HAP-NJ may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the HAP-NJ. If the HAP-NJ chooses to offer a separate waiting list for PBV assistance, the HAP-NJ must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a HAP-NJ decides to establish a separate PBV waiting list, the HAP-NJ may use a single waiting list for the HAP-NJ'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.

HAP-NJ Policy

The HAP-NJ will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance.

17-VI.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]

Applicants who will occupy units with PBV assistance must be selected from the HAP-NJ's waiting list. The HAP-NJ may establish selection criteria or preferences for occupancy of particular PBV units. The HAP-NJ may place families referred by the PBV owner on its PBV waiting list.

Income Targeting [24 CFR 983.251(c)(6)]

At least 75 percent of the families admitted to the HAP-NJ's tenant-based and project-based voucher programs during the HAP-NJ fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

Units with Accessibility Features [24 CFR 983.251(c)(7)]

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the HAP-NJ must first refer families who require such features to the owner.

Preferences [24 CFR 983.251(d), FR Notice 11/24/08]

The HAP-NJ 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 HAP-NJ must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

Although the HAP-NJ is prohibited from granting preferences to persons with a specific disability, the HAP-NJ may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):

- With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
- Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
- For whom such services cannot be provided in a non-segregated setting.

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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 HAP-NJ has projects with more than 25 percent of the units receiving project-based assistance because those projects include "excepted units" (units specifically made available for elderly or disabled families, or families receiving supportive services), the HAP-NJ must give preference to such families when referring families to these units [24 CFR 983.261(b)].

HAP-NJ Policy

The HAP-NJ will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for "excepted units," mobility impaired persons for accessible units). The HAP-NJ will not offer any additional preferences for the PBV program or for particular PBV projects or units.

17-VI.E. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

The HAP-NJ 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 HAP-NJ'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 HAP-NJ 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 HAP-NJ must provide a briefing packet that explains how the HAP-NJ 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 HAP-NJ 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

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Chapter 2). In addition, the HAP-NJ 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 HAP-NJ should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

17-VI.F. OWNER SELECTION OF TENANTS

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(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 HAP-NJ from the HAP-NJ'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 HAP-NJ's subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify the HAP-NJ of any vacancy or expected vacancy in a contract unit. After receiving such notice, the HAP-NJ must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The HAP-NJ and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

HAP-NJ Policy

The owner must notify the HAP-NJ in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

The HAP-NJ 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 HAP-NJ 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.

17-VI.G. TENANT SCREENING [24 CFR 983.255]

HAP-NJ Responsibility

The HAP-NJ is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the HAP-NJ may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

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HAP-NJ Policy

The HAP-NJ will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The HAP-NJ must provide the owner with an applicant family's current and prior address (as shown in HAP-NJ records) and the name and address (if known by the HAP-NJ) of the family's current landlord and any prior landlords.

In addition, the HAP-NJ may offer the owner other information the HAP-NJ 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 HAP-NJ must provide applicant families a description of the HAP-NJ policy on providing information to owners, and the HAP-NJ must give the same types of information to all owners.

The HAP-NJ may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

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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 HAP-NJ, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

17-VII.B. LEASE [24 CFR 983.256]

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

Form of Lease [24 CFR 983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a HAP-NJ model lease.

The HAP-NJ may review the owner's lease form to determine if the lease complies with state and local law. If the HAP-NJ determines that the lease does not comply with state or local law, the HAP-NJ may decline to approve the tenancy.

HAP-NJ Policy

The HAP-NJ will not review the owner's lease for compliance with state or local law.

Lease Requirements [24 CFR 983.256(c)]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

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- The program tenancy requirements;
- The composition of the household as approved by the HAP-NJ (the names of family members and any HAP-NJ-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)]

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for "good cause," or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, the HAP-NJ must provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.

Changes in the Lease [24 CFR 983.256(e)]

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the HAP-NJ a copy of all changes.

The owner must notify the HAP-NJ 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 HAP-NJ and in accordance with the terms of the lease relating to its amendment. The HAP-NJ 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.

Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c), FR Notice 11/24/08]

If a family is living in a project-based unit that is excepted from the 25 percent per project cap on project-basing because of participation in a supportive services program (e.g., Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by HAP-NJ 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.

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Security Deposits [24 CFR 983.258]

The owner may collect a security deposit from the tenant. The HAP-NJ may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

HAP-NJ Policy

The HAP-NJ will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The HAP-NJ has no liability or responsibility for payment of any amount owed by the family to the owner.

17-VII.C. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]

If the HAP-NJ determines that a family is occupying a wrong size unit, based on the HAP-NJ'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 HAP-NJ must promptly notify the family and the owner of this determination, and the HAP-NJ must offer the family the opportunity to receive continued housing assistance in another unit.

HAP-NJ Policy

The HAP-NJ 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 HAP-NJ's determination. The HAP-NJ 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 HAP-NJ offers the family a tenant-based voucher, the HAP-NJ must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by the HAP-NJ).

If the HAP-NJ 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 HAP-NJ, or both, the HAP-NJ must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the HAP-NJ.

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HAP-NJ Policy

When the HAP-NJ 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 HAP-NJ will terminate the housing assistance payments at the expiration of this 30-day period.

The HAP-NJ 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 983.260]

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the HAP-NJ. If the family wishes to move with continued tenant-based assistance, the family must contact the HAP-NJ 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 HAP-NJ 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 HAP-NJ must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.261, FR Notice 11/24/08]

The HAP-NJ may not pay housing assistance under a PBV HAP contract for more than 25 percent of the number of dwelling units in a project unless the units are [24 CFR 983.56]:

- In a single-family building;
- Specifically made available for elderly or disabled families; or
- Specifically made available for families receiving supportive services as defined by the HAP-NJ. At least one member must be receiving at least one qualifying supportive service.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the HAP-NJ and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a "qualifying family" in connection with the 25 percent per project cap exception (e.g., the family does not successfully complete supportive services requirements, or due to a change in family composition the family is no longer elderly or disabled), must vacate the unit

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within a reasonable period of time established by the HAP-NJ, and the HAP-NJ must cease paying housing assistance payments on behalf of the non-qualifying family.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the HAP-NJ.

HAP-NJ Policy

The HAP-NJ will provide PBV assistance for excepted units.

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PART VIII: DETERMINING RENT TO OWNER

17-VIII.A. OVERVIEW

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the tem 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]

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 HAP-NJ, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

Certain Tax Credit Units [24 CFR 983.301(c), FR Notice 11/24/08]

For certain tax credit units, the rent limits are determined differently than for other PBV units. These different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same building, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds a HAP-NJ-determined amount (not to exceed 110 percent of the fair market rent or any approved exception payment standard);

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

However, PHAs are permitted to use the higher Section 8 rent for a tax credit unit if the tax credit rent is less than the amount that would be permitted under Section 8. In these cases, Section 8 rent reasonableness requirements must continue to be met.

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Definitions

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Tax credit rent is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]

When determining the initial rent to owner, the HAP-NJ 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 HAP-NJ must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the HAP-NJ 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 HAP-NJ 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.

HAP-NJ Policy

Upon written request by the owner, the HAP-NJ 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 HAP-NJ 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 HAP-NJ 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 HAP-NJ determines it is necessary due to HAP-NJ budgetary constraints.

Redetermination of Rent [24 CFR 983.302]

The HAP-NJ must redetermine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

Rent Increase

If an owner wishes to request an increase in the rent to owner from the HAP-NJ, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the HAP-NJ. The HAP-NJ may only make rent increases in accordance with the rent limits described previously. There are no provisions in

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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).

HAP-NJ Policy

An owner's request for a rent increase must be submitted to the HAP-NJ 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

The HAP-NJ may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

Rent Decrease

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment.

Notice of Rent Change

The rent to owner is redetermined by written notice by the HAP-NJ to the owner specifying the amount of the redetermined rent. The HAP-NJ 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.

HAP-NJ Policy

The HAP-NJ will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

HAP-NJ-Owned Units [24 CFR 983.301(g)]

For HAP-NJ-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 HAP-NJ must use the rent to owner established by the independent entity.

17-VIII.C. REASONABLE RENT [24 CFR 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the HAP-NJ.

When Rent Reasonable Determinations Are Required

The HAP-NJ must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;

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- The HAP-NJ approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building; or
- There is any other change that may substantially affect the reasonable rent.

How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the HAP-NJ 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 HAP-NJ. The comparability analysis may be performed by HAP-NJ 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.

HAP-NJ-Owned Units

For HAP-NJ-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 HAP-NJ-owned units to the HAP-NJ and to the HUD field office where the project is located.

Owner Certification of Reasonable Rent

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the HAP-NJ may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

Other Subsidy [24 CFR 983.304]

At its discretion, a HAP-NJ may reduce the initial rent to owner because of other governmental subsidies, including grants and other subsidized financing.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

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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.

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PART IX: PAYMENTS TO OWNER

17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]

During the term of the HAP contract, the HAP-NJ must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the HAP-NJ agree on a later date.

Except for discretionary vacancy payments, the HAP-NJ 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 HAP-NJ 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 HAP-NJ determines that the vacancy is the owner's fault.

HAP-NJ Policy

If the HAP-NJ determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, the HAP-NJ will notify the landlord of the amount of housing assistance payment that the owner must repay. The HAP-NJ will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the HAP-NJ, the HAP contract may provide for vacancy payments to the owner. The HAP-NJ may only make vacancy payments if:

- The owner gives the HAP-NJ 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 HAP-NJ to verify that the owner is entitled to the vacancy payment.

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The owner must submit a request for vacancy payments in the form and manner required by the HAP-NJ and must provide any information or substantiation required by the HAP-NJ to determine the amount of any vacancy payment.

HAP-NJ 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 HAP-NJ 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 HAP-NJ may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the HAP-NJ within 10 business days of the HAP-NJ's request, no vacancy payments will be made.

17-IX.C. TENANT RENT TO OWNER [24 CFR 983.353]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the HAP-NJ in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the HAP-NJ 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 HAP-NJ 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 HAP-NJ. The owner must immediately return any excess payment to the tenant.

Tenant and HAP-NJ 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 HAP-NJ.

Likewise, the HAP-NJ is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The HAP-NJ is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The HAP-NJ 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 HAP-NJ 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 HAP-NJ may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the HAP-NJ chooses to pay the utility supplier directly, the HAP-NJ must notify the family of the amount paid to the utility supplier.

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HAP-NJ Policy

The HAP-NJ 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 owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by Owner

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

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