

BOARD BOOK OF MAY 26, 2016



J. Paul Oxer, Chair
Juan Muñoz, Vice-Chair
Leslie Bingham Escareño, Member
T. Tolbert Chisum, Member
Tom H. Gann, Member
J. B. Goodwin, Member

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

A G E N D A
10:00 AM
May 26, 2016

John H. Reagan Building
JHR 140, 105 W 15th Street
Austin, Texas

CALL TO ORDER

ROLL CALL

CERTIFICATION OF QUORUM

J. Paul Oxer, Chairman

Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

RESOLUTION RECOGNIZING JUNE AS *HOMEOWNERSHIP MONTH*

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Texas Government Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

EXECUTIVE

- a) Presentation, Discussion, and Possible Action on Board Meeting Minutes Summaries for March 31, 2016, and April 28, 2016

J. Beau Eccles
Board Secretary

LEGAL

- b) Presentation, Discussion, and Possible Action on Report to Board regarding the initiation of an administrative penalty contested case hearing concerning Missouri Street Residence (HTC 93143 / CTMS 1177) and the adoption of an Agreed Final Order
c) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Oak Park Apartments (CMTS 965 / HTC 91056)

Jeffrey T. Pender
Deputy General Counsel

BOND FINANCE

- d) Presentation, Discussion and Possible Action regarding publication of a Request for Proposal ("RFP") for Underwriters interested in serving as Senior Manager and/or Co-Manager for one or more proposed single family mortgage revenue bond issues beginning in fiscal year 2017

Monica Galuski
Director

ASSET MANAGEMENT

- e) Presentation, Discussion, and Possible Action regarding material amendments to the Housing Tax Credit Land Use Restriction Agreement ("LURA")
99173 Huffman Hollow Apartments Huffman
98161 Garden Gate II Apartments New Caney

Raquel Morales
Director

- f) Presentation, Discussion and Possible Action regarding Ownership Transfer Prior to IRS 8609 Issuance or Construction Completion
15237 TRM Senior Apartments Scattered Sites

HOME PROGRAM

- g) Presentation, Discussion, and Possible Action on Amendments to HOME Single Family Development (“SFD”) Household Commitment Contracts (“HCC”) issued under Administrator Agreement No. 11591 for the Development of three single family homes by WREM Literacy Group, Inc. under SFD Set-Aside 1001897

Jennifer Molinari
Director

SINGLE FAMILY OPERATIONS & SERVICES DIVISION

- h) Presentation, Discussion, and Possible Action regarding Authorization to Release a Notice of Funding Availability (“NOFA”) for the Programming of Program Income (“PI”) for the Neighborhood Stabilization Program Round One (“NSP1”)

Homero Cabello, Jr.
Director

COMMUNITY AFFAIRS

- i) Presentation, Discussion and Possible Action on Approval of the Department’s Administrative Plan for the Section 8 Housing Choice Voucher Program (“HCVP”) Administered by TDHCA in its role as a Public Housing Authority
j) Presentation, Discussion, and Possible Action on Release of the Draft FFY 2017 Low Income Home Energy Assistance Program (“LIHEAP”) State Plan to be made available for Public Comment and to be announced in the *Texas Register*

Michael DeYoung
Director

RULES

- k) Presentation, Discussion, and Possible Action on an order proposing amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter H, Section 8 Housing Choice Voucher Program, §5.802, Local Operator (“LOs”) for the Section 8 Housing Choice Voucher Program (“HCVP”), and directing that they be published in the *Texas Register*

Michael DeYoung
Director, Community Affairs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, April 2016
b) Report regarding The Report on Customer Service as required by Chapter 2114 of the Texas Government Code
c) Report on Activities Assisted under HOME Investment Partnerships Program (“HOME”) Reservation System Participant (“RSP”) Agreement No. 2015-0119 with the Institute for Building Technology and Safety (“IBTS”) to correct construction deficiencies on four single family homes located in Texas City and League City, Galveston County originally assisted by Ebenz Inc. (“Ebenz”)

Michael Lyttle
Chief, External Affairs

Michael Lyttle
Chief, External Affairs

Jennifer Molinari
Director, HOME Program

ACTION ITEMS

ITEM 3: ASSET MANAGEMENT

- a) Presentation, Discussion and Possible Action regarding material amendment to the Housing Tax Credit/HOME Application
15234 Merritt Leisure Midland
b) Presentation, Discussion and Possible Action regarding Placed in Service Deadline Extension pursuant to the Force Majeure provision in the 2015 Qualified Allocation Plan
13119 Emma Finke Villas Midland

Raquel Morales
Director

ITEM 4: MULTIFAMILY FINANCE

- a) Presentation, Discussion, and Possible Action on an Award of Direct Loan Funds
16501 Garden Terrace Phase Austin
- b) Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers under the Department's Multifamily Program Rules
16029 Baxter Lofts Harlingen
16130 Cottages at San Saba San Saba
16260 Churchill at Golden Triangle Community Fort Worth

Marni Holloway
Director

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

J. Paul Oxer
Chairman

1. The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
2. Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;
3. Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;
4. Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or-
5. Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information.

If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número 512-475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

NOTICE AS TO HANDGUN PROHIBITION DURING THE OPEN MEETING OF A GOVERNMENTAL ENTITY IN THIS ROOM ON THIS DATE:

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Texas Department of Housing and Community Affairs

RESOLUTION

WHEREAS, June 2016 is Homeownership Month in Texas;

WHEREAS, the goal of the Texas Department of Housing and Community Affairs (“the Department”) is to ensure that all Texans have access to safe and decent affordable housing;

WHEREAS, it is the policy of the Department to support equal housing opportunities in the administration of its homebuyer and homeownership programs and services;

WHEREAS, this year, the Department is celebrating 35 years of offering affordable first time homebuyer assistance to eligible buyers throughout the State of Texas;

WHEREAS, since 1981, the Department has served as the State’s housing finance agency, providing a choice of mortgage products and services to accommodate market opportunities and buyer needs as appropriate;

WHEREAS, the Department recently launched a brand new, free online homebuyer education tool, Texas Homebuyer U, to ensure buyers are informed and prepared for successful homeownership;

WHEREAS, the Department applauds all those who work to achieve and maintain affordable, responsible homeownership and recognizes those who provide services and resources to all homebuyers regardless of race, color, national origin, religion, sex, disability, or familial status; and

WHEREAS, the Department encourages Texans to explore the numerous resources available during Homeownership Month and throughout the year;

NOW, therefore, it is hereby

RESOLVED, that in the pursuit of the goal and responsibility of providing affordable homeownership opportunities for all, the Governing Board of the Texas Department of Housing and Community Affairs, does hereby celebrate June 2016 as Homeownership Month in Texas and encourages all Texas individuals and organizations, public and private, to join and work together in this observance of Homeownership Month.

Signed this Twenty-Sixth Day of May 2016.



J. Paul Oxer, Chair

Dr. Juan Muñoz, Vice Chair

Leslie Bingham Escareño, Member

Tom H. Gann, Member

T. Tolbert Chisum, Member

J. B. Goodwin, Member

Timothy K. Irvine, Executive Director

CONSENT AGENDA

1a

BOARD ACTION REQUEST

BOARD SECRETARY

MAY 26, 2016

Presentation, Discussion, and Possible Action on Board Meeting Minutes Summaries for March 31, 2016, and April 28, 2016

RECOMMENDED ACTION

Approve Board Meeting Minutes Summaries for March 31, 2016, and April 28, 2016

RESOLVED, that the Board Meeting Minutes Summaries for March 31, 2016, and April 28, 2016, are hereby approved as presented.

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
March 31, 2016

On Thursday, the thirty-first day of March 2016, at 10:30 a.m., the regular monthly meeting of the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") was held in Room JHR 140, John H. Reagan Building, 105 W. 15th Street, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- J. Paul Oxer
- Dr. Juan Muñoz
- T. Tolbert Chisum
- Tom Gann
- JB Goodwin

J. Paul Oxer served as Chair, and James "Beau" Eccles served as secretary.

1) Michael Lyttle, TDHCA Chief of External Affairs, read into the record a resolution in honor of April being Fair Housing Month. The Board by acclaim unanimously adopted the resolution.

2) Stephanie Naquin, TDHCA Director of Compliance, provided clarifying information on Consent Agenda Item 1(i) – Presentation, Discussion, and Possible Actions on: first, an order adopting the amendments to 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.620 (concerning Monitoring for Non-Profit Participation, HUB or CHDO Participation); second, an order adopting the repeal of §10.610 (concerning Tenant Selection Criteria); and, third, an order adopting new §10.610 (concerning Written Policies and Procedures) and directing that these be published in the Texas Register.

3) The Consent Agenda, as clarified, was approved unanimously by the Board.

4) Action Item 3(a) – Report on Department's Fair Housing Activities – was presented by Suzanne Hemphill, TDHCA Manager of Fair Housing Projects. The Board heard the report and took no action.

5) Action Item 3(b) – Report on the proposed National Housing Trust Fund roundtables – was presented by Andrew Sinnott, TDHCA Administrator of Multifamily Loan Programs. The Board heard the report and took no action.

6) Action Item 3(c) – Report on 2017 Qualified Allocation Plan ("QAP") Project – was presented by Marni Holloway, TDHCA Director of Multifamily Finance, with additional information provided by Tim Irvine, TDHCA Executive Director, and Mr. Eccles. The Board heard the report and took no action.

7) Action Item 3(d) – Quarterly Report on Texas Homeownership Division Activity – was presented by Cathy Gutierrez, TDHCA Director of Texas Homeownership Programs, with additional information from Mr. Irvine. The Board heard the report and took no action.

8) Action Item 4 – Presentation, Discussion, and Possible Action on Resolution No. 16-013 Authorizing Substitute Liquidity Facilities and Reoffering Circulars for the Department’s Single Family Variable Rate Bonds; Approving Amendments to the Remarketing Agreements; Authorizing the Execution and Delivery of Documents and Instruments Relating to the Foregoing; Making Certain Findings and Determinations in Connection Therewith; and Containing Other Provisions Relating to the Subject – was presented by Monica Galuski, TDHCA Director of Bond Finance. The Board unanimously approved staff recommendation to authorize the resolution.

9) Action Item 5 – Presentation, Discussion and Possible Action regarding Material Amendments to Housing Tax Credit Application #15234 Merritt Leisure in Midland – was presented by Tom Gouris, TDHCA Deputy Executive Director of Asset Analysis and Management, with additional information from Mr. Eccles and Brent Stewart, TDHCA Director of Real Estate Analysis. Following public comment (listed below), the Board unanimously voted to deny staff recommendation to approve the amendment request.

- Cynthia Bast, Locke Lord, represented the applicant and provided information on the matter

10) Action Item 6 – Presentation, Discussion, and Possible Action on Activities Assisted under HOME Investment Partnerships Program (“HOME”) Reservation System Participant (“RSP”) Agreement No. 2011-0062 with EBENZ Inc. (“EBENZ”) for four single family homes located in Texas City and League City, Galveston County – was presented by Jennifer Molinari, TDHCA Director of HOME Program, with clarifying information provided by Mr. Irvine and Mr. Eccles. The Board unanimously approved staff recommendation to proceed with its action plan on the matter.

11) Action Item 7 – Presentation, Discussion, and Possible Action on the Ratification of Program Year (“PY”) 2016 Community Services Block Grant Awards (“CSBG”) for Cameron and Willacy Counties Community Projects Incorporated (“CWCCP”) and Urban Community Center of North Texas (“UCC”) – was presented by Brooke Boston, TDHCA Deputy Executive Director. The Board unanimously approved staff recommendation to ratify the awards.

12) Action Item 8(a) – Report and Possible Action regarding Eligibility of Representative Letters on Application #16319 Residence at Coulter – was presented by Marni Holloway, TDHCA Director of Multifamily Finance, with clarifying information provided by Mr. Irvine, Mr. Eccles, and Mr. Lyttle. After public comment (listed below), the Board unanimously approved a motion to consider the submitted letter as “neutral” and reduce its point value by eight points.

- Sarah Anderson, a consultant representing the developer of Residence at Coulter, asked the Board and staff questions regarding the procedural order of the agenda item
- Paul Stell, Stellar Development Company and affiliated with The Villas (#16370), testified in support of the motion being considered to consider the submitted letter as “neutral” and reduce its point value by eight points.
- Cynthia Bast, attorney representing applicant for The Villas (#16370), testified in support of the motion being considered to consider the submitted letter as “neutral” and reduce its point value by eight points.
- Henry Flores testified in support of the motion being considered to consider the submitted letter as “neutral” and reduce its point value by eight points.
- Audrey Watson, Overland Property Group, testified in opposition to the motion being considered to consider the submitted letter as “neutral” and reduce its point value by eight points.

13) Action Item 8(b) – Presentation, Discussion and Possible Action regarding the Financing Structure of a Multifamily Direct Loan Award for #15502 Westridge Villa in Frisco – was presented by Ms. Holloway. After public comment (listed below), the Board unanimously approved staff recommendation to approve the financing structure.

- Claire Palmer, attorney representing the Community Housing Development Organization (“CHDO”) in the transaction, testified in support of staff recommendation
- Terri Anderson, Anderson Development and Construction, testified in support of staff recommendation

14) Action Item 8(c) – Presentation, Discussion and Possible Action on Determination Notices for Housing Tax Credits with another Issuer for #16401 George W. Baines in El Paso and #16402 Charles R. Morehead in El Paso – was pulled from consideration on the agenda by request of the applicant.

15) Action Item 9 – Presentation, Discussion, and Possible Actions on: first, withdrawal of previously proposed repeal and concurrent proposed new 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614 (concerning Utility Allowances); second, the proposed repeal of §10.614 (concerning Utility Allowances); and third, the proposed new §10.614 (concerning Utility Allowances) and directing that these be published for public comment in the Texas Register – was presented by Stephanie Naquin, TDHCA Director of Multifamily Compliance. After public comment (listed below), the Board unanimously approved staff recommendation on the rules.

- Dan Allgeier, Texas Affiliation of Affordable Housing Providers, provided suggested language for the draft rule.

16) At 12:10 p.m. the Board went into Executive Session and reconvened in open session at 1:31 p.m. No action was taken in or as a result of Executive Session.

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 2:41 p.m. The next meeting is set for Thursday, April 28, 2016.

Secretary

Approved:

Chair

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
April 28, 2016

On Thursday, the twenty-eighth day of April 2016, at 10:38 a.m., the regular monthly meeting of the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") was held in Room JHR 140, John H. Reagan Building, 105 W. 15th Street, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- J. Paul Ozer
- Dr. Juan Muñoz
- Leslie Bingham-Escareño
- Thomas Gann

J. Paul Ozer served as Chair, and James "Beau" Eccles served as secretary.

- 1) The Consent Agenda, as presented, was approved unanimously by the Board.
- 2) Chairman Ozer exercised his discretion on the order of items and the Board first considered Item 7(c) – Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer for #16401 George W. Baines Apartments in El Paso, #16402 Charles R. Morehead Apartments in El Paso, and #16404 Stallion Pointe Apartments in Fort Worth – as presented by Teresa Morales, TDHCA Manager of the 4% Housing Tax Credit Program. The Board unanimously approved staff recommendation to issue credits for all three transactions.
- 3) Chairman Ozer continued to exercise discretion on the order of items and the Board next considered Item 7(d) – Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds (Garden City Apartments) Series 2016 Resolution No. 16-014 and Determination Notice of Housing Tax Credits – as presented by Ms. Morales, with clarifying information from Patricia Murphy, TDHCA Chief of Compliance. The Board unanimously approved staff recommendation to issue the bonds and credits.
- 4) Chairman Ozer continued to exercise discretion on the order of items and the Board next considered Item 8(a) – Report Regarding the Progress of Youth Count Texas! – as presented by Elizabeth Yevich, TDHCA Director of the Housing Resource Center, and Christine Gendron, Executive Director of the Texas Network of Youth Services. The Board heard the report and took no further action.
- 5) The Board heard the report items for Item 3(a) – Report on the Meeting of the Audit Committee; Item 3(b) – Internal Audit Report #16-002 "Real Estate Analysis Division;" and Item 3(c) – Internal Audit Report #16-007 "Implementation Status of Prior Audit Recommendations." All items were presented by Mark Scott, TDHCA Director of Internal Audit.
- 6) Action Item 4 – Presentation, Discussion and Possible Action regarding Material Amendments to Housing Tax Credit/HOME Applications for #15063 Palladium Van Alstyne Senior Living in Van Alstyne and #15086 The Reserves at Preston Trails in Wolfforth – was presented by Raquel Morales, TDHCA

Director of Asset Management, with clarifying information provided by Mr. Irvine and Tom Gouris, TDHCA Deputy Executive Director. After public comment (listed below), the Board unanimously approved staff recommendation for approval of the amendments.

- John Shackelford, attorney representing #15063 Palladium Van Alstyne Senior Living, provided clarifying information to the Board

7) Action Item 5 – Presentation, Discussion, and Possible Action regarding an appeal of disallowed costs under the HOME program for Ebenz Inc. – was presented by Earnest Hunt, TDHCA Director of Subrecipient Monitoring, with additional information from Mr. Irvine and Jennifer Molinari, TDHCA Director of HOME Program. After public comment (listed below), the Board unanimously approved staff recommendation to deny the appeal.

- Ebenezer Anene, Ebenz Inc., testified in opposition to staff recommendation
- Letticia Anene, Ebenz Inc., testified in opposition to staff recommendation

8) Action Item 6 – Presentation, Discussion, and Possible Action on the Award of contracts to administer the U.S. Department of Energy (“DOE”) and Low Income Home Energy Assistance Program (“LIHEAP”) Weatherization Assistance Program (“WAP”) to Greater East Texas Community Action Program to provide services in Harrison, Jasper, Newton, Panola, Sabine, San Augustine, Shelby, Tyler, and Upshur counties – was presented by Brooke Boston, TDHCA Deputy Executive Director. The Board unanimously approved staff recommendation on the awarding of the contracts.

9) Action Item 7(a) – Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers under the Department’s Multifamily Program Rules for #16175 Crosby Meadows Apartments in Crosby – was presented by Marni Holloway, TDHCA Director of Multifamily Finance. The Board unanimously approved staff recommendation to grant the appeal.

10) Action Item 7(b) – Presentation, Discussion, and Possible Action on an Award of Direct Loan Funds from the 2016-1 Multifamily Direct Loan Notice of Funding Availability for #16500 Bluebonnet Studios in Austin – was presented by Ms. Holloway. The Board unanimously approved staff recommendation to make the award.

11) Action Item 8(b) – Report on 2017 Qualified Allocation Plan (“QAP”) Project – was presented by Ms. Holloway. The Board heard the report and took no action.

12) The following public comment was made on matters other than items for which there were posted agenda items:

- Tamea Dula, Coats Rose, provided compliments for the TDHCA Multifamily staff regarding the work they are doing on the 2016 Competitive Housing Tax Credit awards cycle.
- Tim Alcott, San Antonio Housing Authority, provided comments and ideas for TDHCA staff to consider for possible inclusion in the 2017 Qualified Allocation Plan
- Joy Horak Brown, New Hope Housing, provided comments and ideas for TDHCA staff to consider for possible inclusion in the 2017 Qualified Allocation Plan

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 12:42 p.m. The next meeting is set for Thursday, May 26, 2016.

Secretary

Approved:

Chair

1b

BOARD ACTION REQUEST

LEGAL DIVISION

MAY 26, 2016

Presentation, Discussion, and Possible Action on Report to Board regarding the initiation of an administrative penalty contested case hearing concerning Missouri Street Residence (HTC 93143 / CTMS 1177) and the adoption of an Agreed Final Order

RECOMMENDED ACTION

WHEREAS, Missouri Street Residence, owned by Anistrum Investments, Ltd. ("Owner"), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, Anistrum Investments, Ltd. purchased the property from the original owner in 2004 without Department permission and is bound to the terms of the Land Use Restriction Agreement in accordance with Section 2 thereof;

WHEREAS, file monitoring violations were identified during a file monitoring review conducted June 24, 2015, and a deadline of November 16, 2015, was set for Owner to submit fully acceptable corrective documentation;

WHEREAS, unresolved compliance findings include: lease violations relating to required lease notices and an Affirmative Marketing Plan violation;

WHEREAS, an informal conference was held on April 29, 2016, but Owner failed to appear despite diligent efforts by the Department to ensure attendance in person;

WHEREAS, the Enforcement Committee voted to recommend, subject to Board approval, an Agreed Final Order assessing an administrative penalty of \$1,000, with \$500 to be paid within 30 days of signature and the remaining \$500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before June 26, 2016;

WHEREAS, Owner did not agree with the recommendation and Texas Gov't Code §2306.043 and 10 Tex. Admin. Code §2.302 require the Executive Director to issue a Report to the Board in order to initiate a contested case hearing before the State Office of Administrative Hearings ("SOAH");

WHEREAS, an administrative penalty in the amount of \$1,000 is appropriate under the statutory factors at Texas Gov't Code §2306.042 and the applicable administrative penalty matrix under 10 Tex. Admin. Code §2.302;

WHEREAS, consistent with direction from the Department's Administrative Penalty Committee and the requirements of Tex. Gov't. Code §2306.043, the Executive Director presents this Report to the Board; and

WHEREAS, Department staff will issue a Notice of Report to the Board to Owner and will do all things necessary to pursue correction of all unresolved violations and

the assessment of an administrative penalty in the recommended amount of \$1,000, including, if necessary, a contested case hearing;

NOW, therefore, it is hereby

RESOLVED, that the Board accepts and approves the issuance by the Executive Director of a Report to the Board relating to The David Yilmaz Living Trust and proposing an Agreed Final Order assessing an administrative penalty of \$1,000, subject to partial forgiveness if the Agreed Final Order is signed within the timeline provided, substantially in the form presented at this meeting in the attachment to the Notice of Violation, and authorizing any non-substantive technical corrections, which Order is hereby adopted as the order of this Board in the event that Owner chooses to settle the matter and avoid a contested case hearing.

BACKGROUND

Anistrum Investments, Ltd. ("Owner") is the owner of Missouri Street Residence ("Property"), a low income apartment complex composed of 39 units, located in El Paso County. Records of the Texas Secretary of State list the General Partner as SYLDAVID, L.L.C., with Sylvia Davidson as its sole Director and General Manager. CMTS lists Sylvia Davidson as the primary contact for Owner. The property is managed by the Opportunity Center for the Homeless, and Gilbert Rodriguez and Norman Tomasko are listed as CMTS contacts for that organization. Also known to be associated with the property is Truman Davidson, husband of Sylvia Davidson.

The Property is subject to a Land Use Restriction Agreement ("LURA") signed by a prior owner in 1993 in consideration for a housing tax credit allocation in the annual amount of \$57,330 to acquire, rehabilitate and operate the Property. Current owner acquired the property in 2004 and did not receive prior Department approval, but the LURA remains in effect per Section 2 of the LURA which stipulates that its restrictions run with the land.

Owner was previously referred for an administrative penalty for reporting violations, file monitoring, violations, and UPCS violations, but referrals were closed informally when full corrections were received. Owner has been referred again and unacceptable corrective documentation has been submitted on multiple occasions, in response to correspondence from Compliance and the Enforcement Committee. Technical support has been provided by the Compliance and Legal Divisions, but owner representatives either do not understand or don't agree with TDHCA correspondence. Instead, they send their prior unacceptable corrective documentation in response to every contact from TDHCA.

The following compliance violations identified during 2015 were referred for an administrative penalty and are unresolved:

1. Lease violations relating to failure to provide and execute required notices, including:
 - a. Failure to post the Tenant Rights and Resources Guide in a common area in the office;
 - b. Failure to execute the Tenant Rights and Resources Guide Acknowledgment for unit 9;
2. Failure to maintain an Affirmative Marketing Plan and evidence of associated marketing efforts.

Owner was offered an opportunity to participate in an informal conference with the Enforcement Committee at TDHCA headquarters on April 29, 2016, but did not appear despite diligent efforts by the Department to ensure attendance in person. After reviewing email replies from owner, the circumstances of the referral, the Owner's compliance history, and the relevant statutory factors at TEXAS GOV'T CODE §2306.042, the Enforcement Committee voted to consider an administrative penalty despite the owner's failure to appear. The Enforcement Committee voted to recommend a \$1,000 administrative penalty, subject to partial forgiveness as indicated below if Owner signs an Agreed Final Order with the following terms:

1. Owner must submit \$500 portion of the administrative penalty on or before June 26, 2016;

2. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before June 26, 2016;
3. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$500 will be forgiven; and
4. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Owner did not accept this initial settlement offer. Accordingly, TDHCA will proceed with a contested case hearing, but will make a second settlement offer in an effort to achieve faster compliance and avoid the time and expense of a formal hearing.

TDHCA statute and rules outline the procedure for initiating a contested case:

1. Executive Director issues Report to the Board: Required by TEXAS GOV'T CODE §2306.043 and 10 TEX. ADMIN. CODE §2.302(f).
2. Notice of Report to the Board, also known as a Notice of Violation, sent to Owner: Required by TEXAS GOV'T CODE §2306.043 and 10 TEX. ADMIN. CODE §2.302(g).
3. Owner has 20 days to accept the determination and recommended penalty or request a hearing.
4. If Owner requests a hearing or does not respond, TDHCA would cause a hearing to be docketed with the State Office of Administrative Hearings ("SOAH") in accordance with 10 TEX. ADMIN. CODE §1.13.

Consistent with direction from the Department's Enforcement Committee, an administrative penalty in the amount of \$1,000 is recommended, with a \$500 portion to be probated and forgiven if Owner signs the offered Agreed Final Order and submits acceptable corrective documentation as instructed in the Agreed Final Order within the allotted time periods. The Department will take all necessary steps to initiate a contested case hearing for the full \$1,000 recommended administrative penalty if Owner does not agree to the settlement. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

To: TDHCA Governing Board
From: Timothy K. Irvine, Executive Director
Date: May 26, 2016
Subject: Report to the Board

The Enforcement Committee has recommended an administrative penalty against Anistrum Investments, Ltd. for noncompliance with its Land Use Restriction Agreement and the associated requirements at Missouri Street Residence, and has asked the Executive Director to issue a Report to the Board in order to initiate a contested case hearing before the State Office of Administrative Hearings ("SOAH") in accordance with Tex. Gov't. Code §2306.043 and 10 Tex. Admin. Code §2.302(f). I have, in my capacity as Executive Director of the Department, made the following **PRELIMINARY DETERMINATIONS**:

I. JURISDICTION:

1. During 1993, Alrosin Joint Venture ("Prior Owner") was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$57,330 to acquire, rehabilitate, and operate Missouri Street Residence ("Property") (HTC file No. 93143 / CMTS No. 1177 / LLDL No. 16).
2. Prior Owner signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective December 27, 1993, and filed of record at Volume 2665, Page 1015 of the Official Public Records of Real Property of El Paso County, Texas ("Records"), as amended by a First Amendment executed on September 24, 2001, and filed in the Records at Volume 4129, Page 1388. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.
3. Respondent took ownership of the Property on December 1, 2004 and, although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 2 thereof.
4. Respondent is a Texas limited partnership that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.



II. COMPLIANCE VIOLATIONS:

1. An on-site monitoring review was conducted on June 23, 2015, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a November 16, 2015, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline and remain uncorrected to date:
 - a. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. A document labeled as an affirmative marketing plan was received multiple times in response to an administrative penalty informal conference notice, but the plan was not on an approved form as required by the rule, did not identify groups least likely to apply or the disabled, identified general marketing efforts only, and omitted the required marketing materials to prove that the development was carrying out marketing to those groups that are least likely to apply and to the disabled. The plan included what appeared to be tenant selection criteria and information about the property, rather than a plan to affirmatively market to groups least likely to apply and to the disabled;
 - b. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services; and
 - c. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for unit 9, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services.
2. The following violations remain outstanding at the time of this order:
 - a. Affirmative marketing violation described in FOF #5.a;
 - b. Lease violation described in FOF #5.b;
 - c. Lease violation described in FOF #5.c;

III. LAW/RULE VIOLATIONS:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

4. Respondent violated 10 TEX. ADMIN. CODE §10.617 in 2015, by failing to provide a complete affirmative marketing plan and evidence of outreach efforts;
5. Respondent violated leasing requirements in 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office;
6. Respondent violated leasing requirements in 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to provide a Tenant Rights and Resources Guide to unit 9 and have the household sign an acknowledgment form;
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
8. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
9. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.

IV. RECOMMENDED PENALTY:

The penalty amount of \$1,000 is appropriate under the penalty matrix at 10 Tex. Admin. Code §2.302(j) and the statutory factors identified in Tex. Gov't. Code §2306.042.

Accordingly, after consideration of the factors set out in Tex. Gov't Code 2306.042 and 10 Tex. Admin. Code §2, I recommend that Respondent correct the outstanding violations outlined above and pay an administrative penalty in the amount of \$1,000, with a \$500 portion of the administrative penalty to be deferred and forgiven provided that Respondent signs the offered Agreed Final Order and submits acceptable corrective documentation as instructed in the Agreed Final Order within the allotted time periods.

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
J. Paul Oxer, *Chair*
Juan S. Muñoz, PhD, *Vice Chair*
Leslie Bingham-Escareño
T. Tolbert Chisum
Tom H. Gann
J.B. Goodwin

May 30, 2016

Writer's direct phone # 512.475.3296
Email: tim.irvine@tdhca.state.tx.us

ANISTRUM INVESTMENTS, LTD
ATTN: SYLVIA DAVIDSON
PO BOX 12393
EL PASO, TX 79913

CERTIFIED MAIL NO.: 9171999991703297304379
RETURN RECIEPT REQUESTED
AND FIRST CLASS MAIL

ANISTRUM INVESTMENTS, LTD
C/O SYLVIA DAVIDSON (REG AGENT)
526 MISSOURI ST
EL PASO, TX 79901

CERTIFIED MAIL NO.: 9171999991703297304362
RETURN RECIEPT REQUESTED
AND FIRST CLASS MAIL

SYLDAVID, L.L.C.
SYLVIA DAVIDSON (REG AGENT)
1831 N. ZARAGOZA, STE 106
EL PASO, TX 79936

CERTIFIED MAIL NO.: 9171999991703297304355
RETURN RECIEPT REQUESTED
AND FIRST CLASS MAIL

Re: Property File Number: LIHTC 93143
Case Number: CMTS 1177
Property Name: Missouri Street Residence

NOTICE OF VIOLATION

This letter and attached documents constitute written notice pursuant to Tex. Gov't Code §2306.043(b) and (c) that, subsequent to an investigation by the Texas Department of Housing and Community Affairs ("TDHCA" or "Department") and after providing a report to the Governing Board for the Department regarding the findings of the investigation and recommended administrative penalty, I have, in my capacity as Executive Director of the Department, made preliminary determinations as indicated in the Notice of Report to Board enclosed at Attachment 1, incorporated herein for all purposes.

PURSUANT TO TEX. GOV'T CODE § 2306.044 AND 10 TEX. ADMIN. CODE § 2.302, YOU HAVE TWENTY (20) DAYS FROM THE DATE YOU RECEIVE THIS NOTICE TO ACCEPT THIS DETERMINATION AND RECOMMENDED PENALTY OF THE EXECUTIVE DIRECTOR OR MAKE A REQUEST FOR A HEARING TO BE CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS TO DETERMINE WHETHER A VIOLATION OCCURRED, THE APPROPRIATE PENALTY AMOUNT, OR BOTH. IF YOU FAIL TO RESPOND TO THIS NOTICE IN A TIMELY MANNER, THE EXECUTIVE DIRECTOR SHALL CAUSE A HEARING TO BE SET.



INSTRUCTIONS – PLEASE READ:

HOW TO ACCEPT THIS RECOMMENDED PENALTY THROUGH THE ATTACHED AGREED FINAL ORDER:

TO ACCEPT THIS NOTICE OF VIOLATION, RESPONDENT MUST PERFORM THE FOLLOWING WITHIN TWENTY (20) CALENDAR DAYS OF RECEIPT THEREOF:

1. **SIGN AND RETURN THE ATTACHED AGREED FINAL ORDER;**
2. **PAY THE PARTIAL ADMINISTRATIVE PENALTY IN THE AMOUNT OF \$500 ON OR BEFORE JUNE 25, 2016;**
3. **SUBMIT DOCUMENTATION VIA CMTS PROVING THAT THE OUTSTANDING VIOLATIONS OUTLINED IN THE ATTACHMENTS HAVE BEEN CORRECTED ON OR BEFORE JUNE 25, 2016.**

RETURN TO:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
ATTN: LEGAL - YK
P.O. Box 13941
AUSTIN, TEXAS 78711-3941

HOW TO CONTEST THIS RECOMMENDED PENALTY:

TO CONTEST THIS NOTICE OF VIOLATION, TDHCA STATUTE AND RULES REQUIRE RESPONDENT TO FILE A WRITTEN REQUEST FOR HEARING **WITHIN TWENTY (20) CALENDAR DAYS OF THE RECEIPT THEREOF.**

RETURN TO:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
ATTN: LEGAL - YK
P.O. Box 13941
AUSTIN, TEXAS 78711-3941

IF YOU DO NOT RESPOND:

IF YOU DO NOT RESPOND IN A TIMELY MANNER, TDHCA WILL SET A HEARING WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS.

You may contact Ysella Kaseman at 281.798.2499 or ysella.kaseman@tdhca.state.tx.us with any questions. However, a telephone call or an email do not substitute for the requirement of a written response.

Sincerely,

Timothy K. Irvine
Executive Director

TKI/ytk

Attachments:

- Attachment 1 – Report to the Board
- Attachment 2 – Agreed Final Order

Attachment 1

Report to the Board

(see attached)

Attachment 2

Agreed Final Order

(see attached)

ENFORCEMENT ACTION AGAINST
ANISTRUM INVESTMENTS, LTD
WITH RESPECT TO MISSOURI
STREET RESIDENCE
(HTC FILE # 93143 / CMTS # 1177)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 26th day of May, 2016, the Governing Board' ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **ANISTRUM INVESTMENTS, LTD**, a Texas limited partnership ("Respondent").

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act ("APA"), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV'T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV'T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT

Jurisdiction:

1. During 1993, Alrosin Joint Venture ("Prior Owner") was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$57,330 to acquire, rehabilitate, and operate Missouri Street Residence ("Property") (HTC file No. 93143 / CMTS No. 1177 / LDLD No. 16).

2. Prior Owner signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective December 27, 1993, and filed of record at Volume 2665, Page 1015 of the Official Public Records of Real Property of El Paso County, Texas ("Records"), as amended by a First Amendment executed on September 24, 2001, and filed in the Records at Volume 4129, Page 1388. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.
3. Respondent took ownership of the Property on December 1, 2004 and, although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 2 thereof.
4. Respondent is a Texas limited partnership that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. An on-site monitoring review was conducted on June 23, 2015, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a November 16, 2015, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline and remain uncorrected to date:
 - a. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. A document labeled as an affirmative marketing plan was received multiple times in response to an administrative penalty informal conference notice, but the plan was not on an approved form as required by the rule, did not identify groups least likely to apply or the disabled, identified general marketing efforts only, and omitted the required marketing materials to prove that the development was carrying out marketing to those groups that are least likely to apply and to the disabled. The plan included what appeared to be tenant selection criteria and information about the property, rather than a plan to affirmatively market to groups least likely to apply and to the disabled;
 - b. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

household during the application process and upon any subsequent change to common amenities, unit amenities, or services; and

- c. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for unit 9, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services.
6. The following violations remain outstanding at the time of this order:
- a. Affirmative marketing violation described in FOF #5.a;
 - b. Lease violation described in FOF #5.b;
 - c. Lease violation described in FOF #5.c;

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TEX. ADMIN. CODE §10.617 in 2015, by failing to provide a complete affirmative marketing plan and evidence of outreach efforts;
5. Respondent violated leasing requirements in 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office;
6. Respondent violated leasing requirements in 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to provide a Tenant Rights and Resources Guide to unit 9 and have the household sign an acknowledgment form;
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
8. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.

9. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
10. An administrative penalty of \$1,000 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$1,000, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before June 25, 2016.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the attachments and submit full documentation of the corrections to TDHCA on or before June 26, 2016.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty and the remaining amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the remaining administrative penalty in the amount of \$500 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System (“CMTS”) by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E. 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2016.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: _____
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2016, personally appeared J. Paul Oxer, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this _____ day of _____, 2016, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS

§

COUNTY OF _____

§

§

BEFORE ME, _____, a notary public in and for the State of _____, on this day personally appeared _____, known to me or proven to me through _____ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is _____, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of _____ for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

ANISTRUM INVESTMENTS, LTD, a Texas limited partnership

SYLDAVID, L.L.C., a Texas limited liability company, its general partner

By: _____

Name: Sylvia Davidson

Title: Director and General Manager

Given under my hand and seal of office this _____ day of _____, 2016.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

File Monitoring Violation Resources and Instructions

1. Refer to the following link for all references to the rules at 10 TEX. ADMIN. CODE §10 that are referenced below:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)

2. Refer to the following link for copies of forms that are referenced below:

<http://www.tdhca.state.tx.us/pmcomp/forms.htm>

3. Technical support and training presentations are available at the following links:

Affirmative Marketing webinars: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>

FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>

4. **Affirmative marketing plan –**

Reasons past submissions were unacceptable: Respondent submitted a document labeled as an Affirmative Marketing Plan on multiple occasions, however, it did not comply with minimum rule requirements under 10 TEX. ADMIN. CODE §10.617, a copy of which is enclosed at Attachment 2. Problems include, but are not limited to:

- Did not use HUD Form 935.2A;
- Did not identify populations “least likely to apply”. In general, those populations that are least likely to apply might include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, families with children, and the disabled;
- Did not identify organizations that are associated with groups that are least likely to apply. The only marketing identified was putting ads in Thrifty Nickel. This is general marketing, not affirmative marketing, because Thrifty Nickel serves all persons living in its distribution area;
- Did not include any evidence of special outreach efforts to those “least likely to apply” populations through specific media, organizations, or community contacts that work with “least likely to apply” populations or work in areas where “least likely to apply” populations live;
- Although not prohibited, the plan seemed to relate more to tenant selection criteria and marketing information about the property, rather than a plan for marketing strategies and documentation of outreach efforts to affirmatively market to groups least likely to apply and to the disabled.

To correct:

- a. Identify the appropriate housing market in which outreach efforts will be made;
- b. Determine the groups that are least likely to apply. The Affirmative Marketing Web Tool referenced at 10 TEX. ADMIN. CODE §10.617(d)(5) to determine groups that are least likely to apply is available online at:
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>.
Your property has under 40 units, so you must enter its census tract (48141001600) into the

right side of this tool rather than selecting the development name on the left side of the tool. Persons with disabilities must always be selected as a group least likely to apply.

- c. Identify specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups designated as least likely to apply, including organizations that assist persons with disabilities. For example, a local housing authority serves the general public, not a specific racial or ethnic demographic; therefore, marketing to the housing authority is not affirmative marketing. The same is true for the Department Of Human Services, Texas Work Force Solutions, and Texas Neighborhood Service. A Hispanic Chamber of Commerce or Hispanic publication could be an avenue to market to the Hispanic population if that group is identified as one that is least likely to apply. Similarly, local groups that focus on helping the mentally disabled, physically disabled, disabled veteran affairs groups, etc, could be a way to market to the disabled community. Some examples of groups that focus on the disabled: Easter Seals, United Cerebral Palsy, American Council of the Blind, The Blinded Veterans Association.
- d. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
- e. Comply with all requirements of 10 TEX. ADMIN. CODE §10.617, which we recommend using as a checklist;
- f. Send marketing outreach materials to the identified organizations, ensuring that said marketing materials comply with 10 TEX. ADMIN. CODE §10.617(f)(5). Submit all documentation to the Department via CMTS for review.

5. Lease violations relating to the Tenant Rights and Resources Guide –

Respondent submitted leases and lease addenda for multiple units on multiple occasions in response to this finding, but has not provided the requested documentation.

To correct: Implement the Tenants Rights and Resource Guide (“Guide”) as indicated at 10 TEX. ADMIN. CODE §10.613(k). The Guide and associated Acknowledgment form are available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. Complete the fillable sections of the Guide. Post a laminated copy of the completed Guide in a common area of the leasing office. If there is no on-site leasing office, you should perform this action at the office for the Opportunity Center for the Homeless. Provide a copy of the completed Guide to the household in unit 9 and have them sign the Acknowledgment form. If the household moved out before signing, the finding is uncorrectable. Submit the following via CMTS for review:

- a. A copy of the Guide, with fillable sections completed;
- b. A letter indicating that a laminated copy of the Guide has been posted in a common area of the leasing office; and
- c. A copy of the signed acknowledgment for unit 9 – OR – if the household has vacated the unit before signing, a letter including the move-out date and acknowledging that the finding cannot be resolved.

Attachment 2

10 TEX. ADMIN. CODE §10.617

Affirmative Marketing Requirements

(a) Applicability. Effective April 1, 2015, compliance with this section is required for all Developments with five (5) or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) General. Owners of Developments with five (5) or more total units must affirmatively market their units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or "Affirmative Marketing Plan") to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." In general, those populations that are least likely to apply may include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, and families with children. All Affirmative Marketing Plans must provide for affirmative marketing to persons with disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.

(c) Plan format. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. Owners participating in HUD funded programs administered by the Department must use the version required by the program. The Department may make additional forms or tools available for use.

(d) Determination of populations "least likely to apply." Owners must determine the populations "least likely to apply" (also "identified populations") using the methods identified in paragraphs (1) - (4) of this subsection. Owners may use the methods in paragraphs (1) and (2) of this subsection if the Development is not occupied, if the Development is in initial lease-up, if the Development is less than 40 total units, or the Owner determines that the demographic data on the tenant households and waiting list for the Development ("Tenant Pool") is not sufficiently complete to yield an accurate profile of the populations the Development is serving. Except in the cases of populations that must be the subject of affirmative marketing pursuant to LURA requirements and persons with disabilities, any populations that represent less than 1% of the total population of the county or MSA, as applicable, are not required to be considered "least likely to apply." To assist Owners in identifying least likely to apply populations, the Department shall make the tool described in paragraph (5) of this subsection available to Owners.

(1) New Developments located in Metropolitan Statistical Areas ("MSAs"). The Owner must compare the demographic data from the most recent decennial census for the census tract in which the development site is located to the demographic data of the entire MSA in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the census tract and MSA. The Owner will identify any population in which the percentage representation in the census tract is more than 20% less than the same population's percentage representation in the MSA (*i.e.* a population is more than 20% underrepresented in the census tract as compared to the MSA as a whole).

(2) New Developments not located in MSAs. The Owner must compare the demographic data from the most recent decennial census for the census tract in which the development site is located to the demographic data of the county in which the development site is located. The comparison

must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the census tract and county. The Owner will identify any population in which the percentage representation in the census tract is more than 20% less than the same population's percentage representation in the county (*i.e.*, a population is more than 20% underrepresented in the census tract as compared to the county as a whole). Example 617(1), County data shows 80% of the population in the County is Non-White Hispanic; the new development's census tract shows that 40% of the new development's census tract is Non-White Hispanic. The development must market to the Non-White Hispanic population because the 40% of Non-White Hispanics represented in the census tract shows an underrepresentation of more than 20% (*e.g.*, it is lower than 64%, which is 20% of 80%) when compared with the County percentage ($80\% \times 20\% = 16\%$; $80\% - 16\% = 64\%$). If the census tract showed evidence of 65% or more Non-White Hispanics in the area, the development would not market to the Non-White Hispanic population.

(3) Established Developments located in MSAs. The Owner must compare the demographic data of the Development's Tenant Pool to the demographic data of the MSA in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the tenant pool and MSA. The Owner will identify any population in which the percentage representation in the Tenant Pool is more than 20% less than the same population's percentage representation in the MSA (*i.e.*, a population is more than 20% underrepresented in the tenant pool as compared to the MSA as a whole). *Example 617(2)*, the Owner's tenant pool shows that 5% of the population in the development is African American and that 8% of the population in the MSA is African American. The development must market to African American populations because the 5% of African Americans represented in the development shows an underrepresentation of more than 20% ($8\% \times 20\% = 1.6\%$; $8\% - 1.6\% = 6.4\%$). If the development showed evidence of 6.4% or more African Americans in the tenant pool, the development would not market to the African American population. In a development with 150 units in this scenario, at least 6.4% or 10 residents must be African American to show that the population is adequately represented and should not be selected as a "least likely to apply" group requiring special outreach and marketing.

(4) Established Developments not located in MSAs. The Owner must compare the demographic data of the Development's Tenant Pool to the demographic data of the county in which the development site is located. The comparison must be done for each of the populations identified in subsection (b) of this section using the percentage each group represents for the tenant pool and county. The Owner will identify any population in which the percentage representation in the tenant pool is more than 20% less than the same population's percentage representation in the county (*i.e.*, a population is more than 20% underrepresented in the tenant pool as compared to the county as a whole).

(5) The Department will develop and maintain an online tool for performing the comparisons required by paragraphs (1) - (4) of this subsection, and, an Owner may rely on analysis required under paragraphs (1) - (4) (but not an analysis made pursuant to subsection (e) of this section) made correctly using this tool. The Department may update the tool more frequently than an Owner is required to review and/or revise their Affirmative Marketing Plan pursuant to subsection (g) of this section. Provided an Owner is in compliance with subsection (g), an Owner is not required to update their plan as updates to the Department's tool are made available.

(e) Other determinations of "least likely to apply." If the owner identifies other ethnic and/or religious groups that may be underrepresented and chooses to incorporate such group(s) into the Affirmative Marketing Plan, the Owner must perform and document a reasonable process by which

the groups were identified.

(f) Marketing and Outreach.

(1) The plan must include special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live.

(2) Developments must utilize methods of outreach throughout the MSA or, where subdivided into a Metropolitan Division, such Division (for Developments located in an MSA) or county (for Developments not located in an MSA). Efforts can be made beyond these areas at the discretion of the Owner. While these areas may be very large, in many instances outreach in areas located in another county or across town are necessary to effectively reach the identified populations.

(3) Developments must consider how Limited English Proficiency may affect populations least likely to apply, including ways it plans to mitigate language barriers related to advertising and community outreach. Such information should be included in the Affirmative Marketing Plan as an additional consideration or as an attachment to the Plan.

(4) Development Owners must allow applicants to submit applications via mail or at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. If the Development requires an application fee, the consideration of an application without payment may be deferred pending receipt of the fee. Applications must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria. If the development chooses to use an electronic application, prior approval from the Department is required to mitigate fraud, waste and abuse.

(5) Advertisements and/or marketing materials used must include the Fair Housing logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. The contact information must be in English and Spanish, at a minimum.

(g) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations at least six months prior to the anticipated date the first building is to be available for occupancy. As a condition of an award to a new Development, the Board may require affirmative marketing efforts to begin more than six (6) months prior to the anticipated date the first building is to be placed in service; and

(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply at least every two (2) years from the effective date of the current plan or, for HUD funded or USDA properties, as otherwise required by HUD or USDA.

(h) Biennial Plan Review. The plan must include how, and by whom, data will be collected and evaluated, how often the plan will be re-evaluated, and how the re-evaluation will be completed. The Owner must review demographic data and household characteristics from the Tenant Pool relative to the county or MSA. If any identified population is or remains underrepresented by more than 20%, the Owner should determine whether the percentage of change is greater or less than when the Affirmative Marketing Plan was last evaluated. If, upon review of the Tenant Pool, the Owner determines that there has been no change (including negative change) or only a limited amount of success, the Owner must:

(1) Complete an evaluation of efforts to date (including a review of current advertising, outreach, and networking strategies and what, if any of the strategies used, has been successful) and gather a list of existing and new community resources available for use in revising the current Affirmative Fair Housing Marketing Plan; and

(2) Revise the Affirmative Fair Housing Marketing Plan to include a wider distribution area and/or new strategies for outreach and/or more frequent outreach efforts.

(i) Record keeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(j) Exception to Affirmative Marketing. If the Development has closed its waiting list, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waiting list, or is marketing prior to placement in service as required under paragraph (g)(1) of this section.

Source Note: The provisions of this §10.617 adopted to be effective January 8, 2015, 40 TexReg 44

Attachment 3:

Texas Administrative Code

TITLE 10

COMMUNITY DEVELOPMENT

PART 1

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10

UNIFORM MULTIFAMILY RULES

SUBCHAPTER E

POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

RULE §10.406

Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

1c

BOARD ACTION REQUEST

LEGAL DIVISION

MAY 26, 2016

Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Oak Park Apartments (CMTS 965 / HTC 91056)

RECOMMENDED ACTION

WHEREAS, Oak Park Apartments, owned by The David Yilmaz Living Trust ("Owner"), has a history of uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, new file monitoring violations were identified during a file monitoring review conducted in February 2015, and a deadline of May 21, 2015, was set for The David Yilmaz Living Trust to submit fully acceptable corrective documentation;

WHEREAS, an informal conference was held on November 17, 2015, and The David Yilmaz Living Trust failed to appear despite diligent efforts by the Department to ensure attendance;

WHEREAS, multiple violations remained unresolved and the Enforcement Committee voted to recommend an administrative penalty of \$2,000, which has since been adjusted due to multiple factors;

WHEREAS, a Report to the Board was issued on December 17, 2015, regarding the recommended administrative penalty and the Department's intention to initiate a contested case hearing before the State Office of Administrative Hearings ("SOAH");

WHEREAS, a contested case hearing was initiated and continued multiple times;

WHEREAS, the administrative penalty has been adjusted to \$500 and Owner will have 30 days from the date of the Agreed Final Order to submit fully acceptable corrections; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case;

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$500 and requiring corrections within 30 days, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

The David Yilmaz Living Trust ("Owner") is the owner of Oak Park Apartments ("Property"), a low income apartment complex composed of 104 units, located in Dallas County. Owner is controlled by David Yilmaz. The property is self managed.

The Property is subject to a Land Use Restriction Agreement ("LURA") signed by a prior owner in 1991 in consideration for an annual housing tax credit allocation in the amount of \$711,850 to rehabilitate and operate the Property. Current owner acquired the property in 2005 and did not receive prior Department approval, but the LURA remains in effect per Section 2 of the LURA which stipulates that its restrictions run with the land.

An onsite file monitoring review was conducted in February 2015 and partial corrective documentation was submitted late, after reminders by Compliance staff. The following compliance violations were referred for an administrative penalty and remain unresolved:

1. Household income violation for unit 211;
2. Notice of amenities and services violation for unit 211; and
3. 2014 Annual Owner's Compliance Report violation, for which counsel has recently found cannot be penalized under the rule as written. The report was submitted, but one of the answers was not adequately explained.

The property has been consistently noncompliant since it was purchased by The David Yilmaz Living Trust during 2005 and, although the Department's Enforcement Committee ("Committee") has been able to bring the property into compliance after past administrative penalty referrals and it is clear that file monitoring requirements at the property have improved under the current manager, the Compliance Division and Committee have been unsuccessful in deterring subsequent violations and administrative penalty referrals. A Report to the Board was issued after an unsuccessful informal conference setting in 2015 that resulted in an administrative penalty recommendation of \$2,000.

A contested case hearing was scheduled with the State Office of Administrative Hearings and has been continued multiple times. In the interim period, counsel for the Department found that part of the penalty could not be pursued under current rules with respect to the 2014 Annual Owner's Compliance Report. The report was submitted in full, however, one of the answers was not adequately explained. Although the answer indicated noncompliance, the rule as written only permits a penalty for an annual report violation if the owner fails to submit the report. This has decreased the administrative penalty by \$1,000. The administrative penalty was then decreased by an additional \$500 to encourage settlement.

Consistent with direction from the Department's Enforcement Committee, as adjusted by counsel during settlement negotiations, an administrative penalty in the amount of \$500 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST
THE DAVID YILMAZ LIVING TRUST
WITH RESPECT TO OAK PARK
APARTMENTS (LIHTC FILE # 91056 /
CMTS # 965)

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§
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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 26th day of May, 2016, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **THE DAVID YILMAZ LIVING TRUST** ("Respondent").

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act ("APA"), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV'T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV'T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT

Jurisdiction:

1. During 1991, Dominion Equity Corporation ("Prior Owner") was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$711,850 to rehabilitate and operate Oak Park Apartments ("Property") (HTC file No. 91056 / CMTS No. 965 / LDLD No. 139).
2. Prior Owner signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective November 7, 1991, and filed of record at Volume 91227, Page

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TEX. ADMIN. CODE §10.611 and Section 4 of the LURA in 2015, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for the unit 211;
5. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to execute the Notice of Amenities and Services for unit 211;
6. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
7. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
8. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
9. An administrative penalty of \$500.00 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$500.00.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay the full \$500.00 administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" within 30 days of the date this order is executed.

5621 of the Official Public Records of Real Property of Dallas County, Texas ("Records"). In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.

3. Respondent took ownership of the Property on December 30, 2005 and, although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 2 thereof.
4. Respondent is a trust that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. An on-site monitoring review was conducted during February of 2015 to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a May 21, 2015, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline and no corrective documentation was submitted in response to Enforcement Committee intervention:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for unit 211, a violation of 10 TEX. ADMIN. CODE §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program;
 - b. Respondent failed to provide a Notice of Amenities and Services to unit 211, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which required owners to provide to each household, at the time of execution of an initial lease and whenever there was a subsequent change in amenities and services, a notice describing those amenities and services. This form has since been combined with the Fair Housing Disclosure Notice into a replacement document called a "Tenant Rights and Resources Guide."
6. The following violations remain outstanding at the time of this order:
 - a. Household income violation described in FOF #5a;
 - b. Notice of Amenities and Services violation described in FOF #5b;

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the attachments and submit full documentation of the corrections to TDHCA on or before thirty days from the date this order is executed.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. The penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

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Approved by the Governing Board of TDHCA on _____, 2016.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: _____
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2016, personally appeared J. Paul Oxer, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this _____ day of _____, 2016, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)

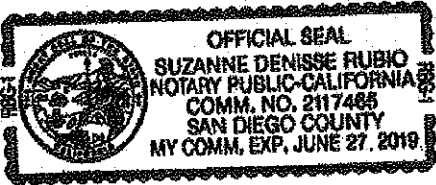
On May 10th 2016 before me, Suzanne Denise Rubio (Notary Public)
Date Here insert Name and Title of the Officer

personally appeared David Tilman
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, _____, a notary public in and for the State of _____, on this day personally appeared _____, known to me or proven to me through _____ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, depose as follows:

1. "My name is _____, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of _____ for Respondent. I am the authorized representative of Respondent, owner of Oak Park Apartments, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

THE DAVID YILMAZ LIVING TRUST,

By: David Yilmaz

Name: David Yilmaz

Title: Trustee

Given under my hand and seal of office this _____ day of _____, 2016.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

from Notarial Attachment (12/12)

RECEIVED
MAY 13 1976
Federal Department of Housing
and Community Affairs

CHECK ENCLOSED
PROCESSED BY
ADSS TO ACCOUNTING

For Department of Housing
and Community Affairs

PAY TO THE ORDER OF TORCSA

FOR DEPOSIT ONLY Per Withdrawal

Bank of America

DATE 5/16/76

AMOUNT 1 \$ 500 00

DOLLARS Five Hundred

1056
11/29/75
1025

DEA YLMAZ OAK PARK APARTMENTS
1535 WASHINGTON ST. S.E.
SAN DIEGO, CA 92108-2738

FOR _____

1d

BOARD ACTION REQUEST

BOND FINANCE DIVISION

MAY 26, 2016

Presentation, Discussion and Possible Action regarding publication of a Request for Proposal ("RFP") for Underwriters interested in serving as Senior Manager and/or Co-Manager for one or more proposed single family mortgage revenue bond issues beginning in fiscal year 2017.

RECOMMENDED ACTION

WHEREAS, publication of the RFP will allow the Department to identify qualified Underwriters to structure and market single family mortgage revenue bond issues; and

WHEREAS, the Board desires to select an underwriting team for single family bond issues beginning in fiscal year 2017;

NOW, therefore it is hereby

RESOLVED, that the Director of Bond Finance be authorized, empowered, and directed, for and on behalf of the Department, to publish an RFP for Underwriters, to select a team of Underwriters in accordance with the RFP, and to report the selection to the Board.

BACKGROUND

The Department's current underwriting team is composed of seven investment banking firms; three firms were designated as Senior Managers and four as Co-Managers. For each proposed bond issue, staff recommends the specific firms that will serve as Underwriters for the financing. Typically, staff recommends a Senior Manager and two to four Co-Managers, depending on the size and structure of the proposed bond issue. While Senior Managers can also serve as Co-Managers, firms designated as a Co-Manager are limited to serving as a Co-Manager.

Staff is recommending that the Department select an underwriting team of no more than seven investment banking firms. Staff is further recommending that no categorization of Senior Manager or Co-Manager be made at the time the team is selected. Rather, staff would recommend the Senior Manager and Co-Managers from the pool of approved Underwriters on a transaction-by-transaction basis. This would expand the number of potential Senior Managers for each issue and will provide the Department maximum flexibility in selecting, for each financing, the Underwriters best suited to market the bonds based on the specifics of each transaction.

The responses to the RFP will be reviewed and scored by Bond Finance staff using criteria established in the RFP. Some key components to the review and selection include:

- Prior experience serving the Department
- Experience and expertise of personnel assigned
- Demonstrated commitment to the housing bond market
- Financial strength of the responding firm

Staff will develop and publish an RFP to identify qualified Underwriters, select an Underwriting Team, and report the selection to the Board.

1e

BOARD ACTION REQUEST

ASSET MANAGEMENT

MAY 26, 2016

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit Land Use Restriction Agreement (“LURA”) for Huffman Hollow Apartments (# 99173)

RECOMMENDED ACTION

WHEREAS, Huffman Hollow Apartments (the “Development”) received an award of 9% Housing Tax Credits in 1999 to construct 76 multifamily units in Huffman;

WHEREAS, the LURA for the Development requires a two-year Right of First Refusal (“ROFR”) period;

WHEREAS, in Spring 2015 the Texas Legislature amended Texas Government Code §2306.6726 to allow for a 180-day ROFR period;

WHEREAS, the General Partner, acting on behalf of the Partnership, requests to amend the LURA to eliminate the two-year ROFR period and replace it with the 180-day ROFR period; and

WHEREAS, 10 TAC §10.405(b)(2)(F) allows for an owner to request a material LURA amendment to replace the two-year ROFR period with the 180-day ROFR period, and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Huffman Hollow Apartments is approved, as presented to this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Huffman Hollow Apartments was approved in 1999 for the construction of 76 multifamily units in Huffman. In a letter dated April 7, 2016, the General Partner (Plummer Properties, Inc.) has requested approval to amend the LURA related to the ROFR provision. The LURA for the Development requires the Development Owner to provide a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR, Part 92 to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization if at any time after the fifteenth year of the Compliance Period the owner decides to sell the property.

In 2015 the Texas Legislature passed HB 3576 which amended Texas Government Code §2306.6726 to allow for a 180-day ROFR period. The Department’s 2016 Post Award and Asset Management

Requirements implemented administrative procedures to allow a Development Owner to conform to a ROFR period described in amended §2306.6726.

The Development Owner must comply with the amendment and notification requirements under the Department's rule as defined in Texas Government Code §2306.6712 and 10 TAC §10.405(b). The Development Owner has notified the tenants, lenders, investors and State and local public officials of this amendment request. The Development Owner held a public hearing on May 4, 2016, at 6:00 pm at the Development's management office/clubhouse. No public comment was received.

Staff recommends approval, subject to no negative public comment received, to amend the LURA to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

Huffman Hollow, Ltd.
19276 FM 1485 Road
New Caney, Texas 77357

April 7, 2016

VIA HAND DELIVERY

Lucy Trevino
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 99173 – Huffman Hollow Apartments (the "**Property**")

Dear Lucy:

The undersigned, being the General Partner (herein so called) of Huffman Hollow, Ltd., a Texas limited partnership (the "**Partnership**") and the current owner of the Property, hereby submits this letter as a request for a material LURA amendment in accordance with Section 10.405(b) of the Rules for the reasons set forth below.

Background Information and Request

In 2015, Texas Government Code Section 2306.6725 was amended to allow for a 180-day Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(F) of the Rules allows for a LURA amendment in order to conform a ROFR period to the period described in Section 2306.6725. Therefore the General Partner, acting on behalf of the Partnership, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.


LURA Amendment

In accordance with Section 10.405(b) of the Rules, the General Partner, acting on behalf of the Partnership, is delivering a fee in the amount of \$2500. In addition, the General Partner, acting on behalf of the Partnership, commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the General Partner, acting on behalf of the Partnership, will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the General Partner, acting on behalf of the Partnership, requests staff recommendation, in support of this request, to be considered at the May 26, 2016 TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

Plummer Properties, Inc.,
its general partner

By: 
Larry C. Washburn, President

Huffman Hollow, Ltd.
19276 FM 1485 Road
New Caney, Texas 77357

April __, 2016

Dear Resident:

Huffman Hollow Apartments (the “**Community**”) is owned by Huffman Hollow, Ltd. (the “**Owner**”). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”) (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on May 4, 2016 at 6:00 p.m.

Please note that this proposal would not affect your current lease agreement, your rent payment, or your security deposit. You would *not* be required to move out of your home or take any other action because of this change. If the Department approves Owner’s request, the Community will not change at all from its current form.

We appreciate that Huffman Hollow Apartments is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Huffman Hollow Apartments as your home.

Sincerely,

Plummer Properties, Inc.,
its general partner

By: _____
Larry C. Washburn, President

Huffman Hollow, Ltd.
19276 FM 1485 Road
New Caney, Texas 77357

March ____, 2016

[Elected Official]

Dear [Addressee]:

Huffman Hollow, Ltd. (the “**Owner**”) is the owner of Huffman Hollow Apartments (the “**Community**”) which is located at 25000 FM 2100, Huffman, Texas 77336. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on May 4, 2016 at 6:00 p.m.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

Plummer Properties, Inc.,
its general partner

By: _____
Larry C. Washburn, President

Huffman Hollow, Ltd.
19276 FM 1485 Road
New Caney, Texas 77357

April ____, 2016

[Investor/Lender]

Dear [Addressee]:

Huffman Hollow, Ltd. (the “**Owner**”) is the owner of Huffman Hollow Apartments (the “**Community**”) which is located at 25000 FM 2100, Huffman, Texas 77336. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community, its elected representatives and the Owner’s other financing partners. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on May 4, 2016 at 6:00 p.m.

We invite you to attend and give your input on this proposal.

Sincerely,

Plummer Properties, Inc.,
its general partner

By: _____
Larry C. Washburn, President

BOARD ACTION REQUEST

ASSET MANAGEMENT

MAY 26, 2016

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit Land Use Restriction Agreement (“LURA”) for Garden Gate II Apartments (# 98161)

RECOMMENDED ACTION

WHEREAS, Garden Gate II Apartments (the “Development”) received an award of 9% Housing Tax Credits in 1998 to construct 32 multifamily units in New Caney;

WHEREAS, the LURA for the Development requires a two-year Right of First Refusal (“ROFR”) period;

WHEREAS, in Spring 2015 the Texas Legislature amended Texas Government Code §2306.6726 to allow for a 180-day ROFR period;

WHEREAS, the General Partner, acting on behalf of the Partnership, requests to amend the LURA to eliminate the two-year ROFR period and replace it with the 180-day ROFR period; and

WHEREAS, 10 TAC §10.405(b)(2)(F) allows for an owner to request a material LURA amendment to replace the two-year ROFR period with the 180-day ROFR period, and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Garden Gate II Apartments is approved, as presented to this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Garden Gate II Apartments was approved in 1998 for the construction of 32 multifamily units in New Caney. In a letter dated April 7, 2016, the General Partner (East Montgomery Housing, L.L.C.) has requested approval to amend the LURA related to the ROFR provision. The LURA for the Development requires the Development Owner to provide a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR, Part 92 to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization if at any time after the fifteenth year of the Compliance Period the owner decides to sell the property.

In 2015 the Texas Legislature passed HB 3576 which amended Texas Government Code §2306.6726 to allow for a 180-day ROFR period. The Department’s 2016 Post Award and Asset Management

Requirements implemented administrative procedures to allow a Development Owner to conform to a ROFR period described in amended §2306.6726.

The Development Owner must comply with the amendment and notification requirements under the Department's rule as defined in Texas Government Code §2306.6712 and 10 TAC §10.405(b). The Development Owner has notified the tenants, lenders, investors and State and local public officials of this amendment request. The Development Owner held a public hearing on May 4, 2016, at 6:00 pm at the Development's management office/clubhouse. No public comment was received.

Staff recommends approval, subject to no negative public comment received, to amend the LURA to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

New Caney Housing II, Limited Partnership
19276 FM 1485 Road
New Caney, Texas 77357

April 7, 2016

VIA HAND DELIVERY

Lucy Trevino
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 98161 – Garden Gate II Apartments (the "**Property**")

Dear Lucy:

The undersigned, being the General Partner (herein so called) of New Caney Housing II, Limited Partnership, a Texas limited partnership (the "**Partnership**") and the current owner of the Property, hereby submits this letter as a request for a material LURA amendment in accordance with Section 10.405(b) of the Rules for the reasons set forth below.

Background Information and Request

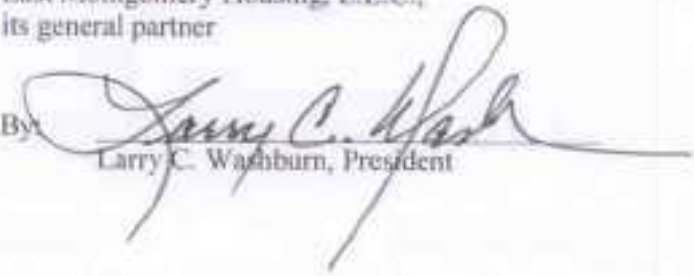
In 2015, Texas Government Code Section 2306.6725 was amended to allow for a 180-day Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(F) of the Rules allows for a LURA amendment in order to conform a ROFR period to the period described in Section 2306.6725. Therefore the General Partner, acting on behalf of the Partnership, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

LURA Amendment

In accordance with Section 10.405(b) of the Rules, the General Partner, acting on behalf of the Partnership, is delivering a fee in the amount of \$2500. In addition, the General Partner, acting on behalf of the Partnership, commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the General Partner, acting on behalf of the Partnership, will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the General Partner, acting on behalf of the Partnership, requests staff recommendation, in support of this request, to be considered at the May 26, 2016 TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

East Montgomery Housing, L.L.C.,
its general partner
By 
Larry C. Washburn, President

New Caney Housing II, Limited Partnership
19276 FM 1485 Road
New Caney, Texas 77357

April __, 2016

Dear Resident:

Garden Gate II Apartments (the "**Community**") is owned by New Caney Housing II, Limited Partnership (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on May 4, 2016 at 6:00 p.m.

Please note that this proposal would not affect your current lease agreement, your rent payment, or your security deposit. You would *not* be required to move out of your home or take any other action because of this change. If the Department approves Owner's request, the Community will not change at all from its current form.

We appreciate that Garden Gate II Apartments is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Garden Gate II Apartments as your home.

Sincerely,

East Montgomery Housing, L.L.C.,
its general partner

By: _____
Larry C. Washburn, President

New Caney Housing II, Limited Partnership
19276 FM 1485 Road
New Caney, Texas 77357

April __, 2016

[Elected Official]

Dear [Addressee]:

New Caney Housing II, Limited Partnership (the “**Owner**”) is the owner of Garden Gate II Apartments (the “**Community**”) which is located at 20040 FM 1485 Road, New Caney, Texas 77357. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on May 4, 2016 at 6:00 p.m.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

East Montgomery Housing, L.L.C.,
its general partner

By: _____

Larry C. Washburn, President

New Caney Housing II, Limited Partnership
19276 FM 1485 Road
New Caney, Texas 77357

April __, 2016

[Investor/Lender]

Dear [Addressee]:

New Caney Housing II, Limited Partnership (the “**Owner**”) is the owner of Garden Gate II Apartments (the “**Community**”) which is located at 20040 FM 1485 Road, New Caney, Texas 77357. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community, its elected representatives and the Owner’s other financing partners. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on May 4, 2016 at 6:00 p.m.

We invite you to attend and give your input on this proposal.

Sincerely,

East Montgomery Housing, L.L.C.,
its general partner

By: _____
Larry C. Washburn, President

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BOARD ACTION REQUEST

ASSET MANAGEMENT

MAY 26, 2016

Presentation, Discussion, and Possible Action regarding an ownership transfer prior to IRS 8609 issuance or construction completion for TRM Senior Apartments (File No. 15237)

RECOMMENDED ACTION

WHEREAS, TRM Senior Apartments (the “Development”) received an award of 9% Housing Tax Credits (“HTC”) in 2015 for the acquisition and rehabilitation of three scattered sites that have a total of 88 multifamily units in Troup, Rusk, and Mount Pleasant;

WHEREAS, the General Partner, TRM Senior Apartments GP, LLC is solely owned by Rural Housing Developers, LLC with Ryan Hamilton, Kenneth Hamilton, and Doug Hamilton each holding a 33.3% interest in the entity;

WHEREAS, the current sole member in the General Partner, Rural Housing Developers, LLC, and principal, Kenneth Hamilton, have requested to be removed from the Ownership structure;

WHEREAS, no new entities or principals will be added to the ownership structure and Ryan Hamilton and Doug Hamilton will each remain as 50% owners in TRM Senior Apartments GP, LLC;

WHEREAS, Kenneth Hamilton, who was used to meet the Experience Requirement in the Application, and Rural Housing Developers, LLC will still serve as the sole Developer for the Development; and

WHEREAS, the transfer of ownership is being requested prior to the issuance of IRS Form(s) 8609 and the completion of construction and 10 TAC §10.406(e) requires that parties reflected in the Application that have control must remain in the ownership structure and retain such control, unless approved otherwise by the Board;

NOW, therefore, it is hereby

RESOLVED, that the ownership transfer for TRM Seniors Apartments is approved as presented to this meeting, and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

TRM Senior Apartments was approved in 2015 for the acquisition and rehabilitation of three scattered sites that together total 88 multifamily units located in Troup, Rusk, and Mount Pleasant, TX. The owner is requesting to remove Rural Housing Developers, LLC as the sole member of the General Partner, TRM

Seniors Apartments GP, L.L.C. Rural Housing Developers, LLC has three principals: Ryan Hamilton, Kenneth Hamilton, and Doug Hamilton each having a 33.3% ownership interest in the entity. With this change TRM Seniors Apartments GP, L.L.C. will remain as the sole General Partner entity and Ryan and Doug Hamilton will split the ownership 50/50 while Kenneth Hamilton will be departing the ownership structure. The reason for this request as provided by the Applicant is that Kenneth Hamilton is winding down some of his operations and does not want the long term commitments associated with a tax credit award. There are no new entities or principals coming into the ownership structure.

Rural Housing Developers, LLC will remain the sole Developer for Development. Kenneth Hamilton was used to meet the Experience requirement in the 2015 Application, pursuant to 10 TAC §10.204(6) of the 2015 Uniform Multifamily Rules. The Experience requirement will not be affected by this change as he still remains a principal of the Developer. The owner is also requesting approval to change the General Contractor from Murdoch Contracting to Hamilton Contracting, Inc. A change in contractor does not require approval by the Department, but is being disclosed in this board action as it was a part of the Applicant's request.

Staff recommends approval of the requested change in ownership TRM Seniors Apartments.

RURAL HOUSING DEVELOPERS, LLC

3556 S. Culpepper, Suite 7 * Springfield, MO 65804

Phone: (417) 883-7887 * Fax (417) 883-5203

Kent Bedell
TDHCA Asset Manager
221 East 11th Street
Austin, Texas 78701

RE: Request for change in ownership structure of 15237 TRM Senior Apartments

Dear Mr. Bedell,

Please consider this letter as a formal request to be placed on the agenda for the next available TDHCA Board Meeting, which our understanding is set to occur on May 26, 2016.

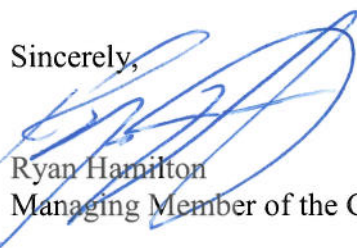
We wish to request a change in the ownership structure for 15237 TRM Senior Apartments. As this development has not yet been completed, nor received 8609's, we are requesting a waiver under 10.406(e) of the TDHCA Rules.

We are requesting a change to the make-up of the General Partner Entity, TRM Senior Apartments GP, LLC. We wish to remove Rural Housing Developers as the sole member of the General Partner and replace it with two individuals, Ryan and Douglas Hamilton. This is more easily displayed through the attached before and after Organization Charts.

All other interested parties; lenders, investors, syndicators, etc., are aware of and okay with the proposed change.

Please let us know if anything further is needed to facilitate this request.

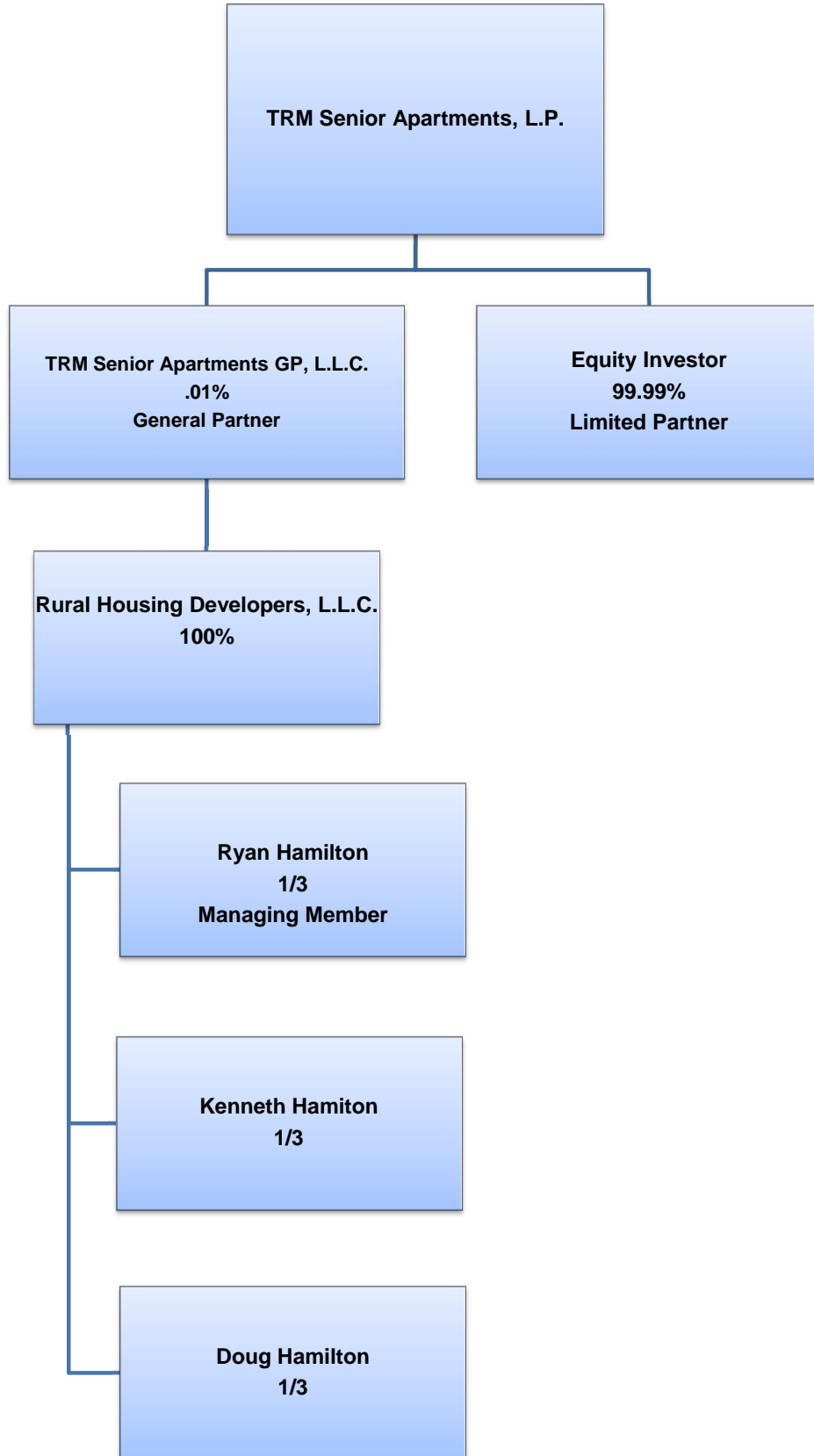
Sincerely,



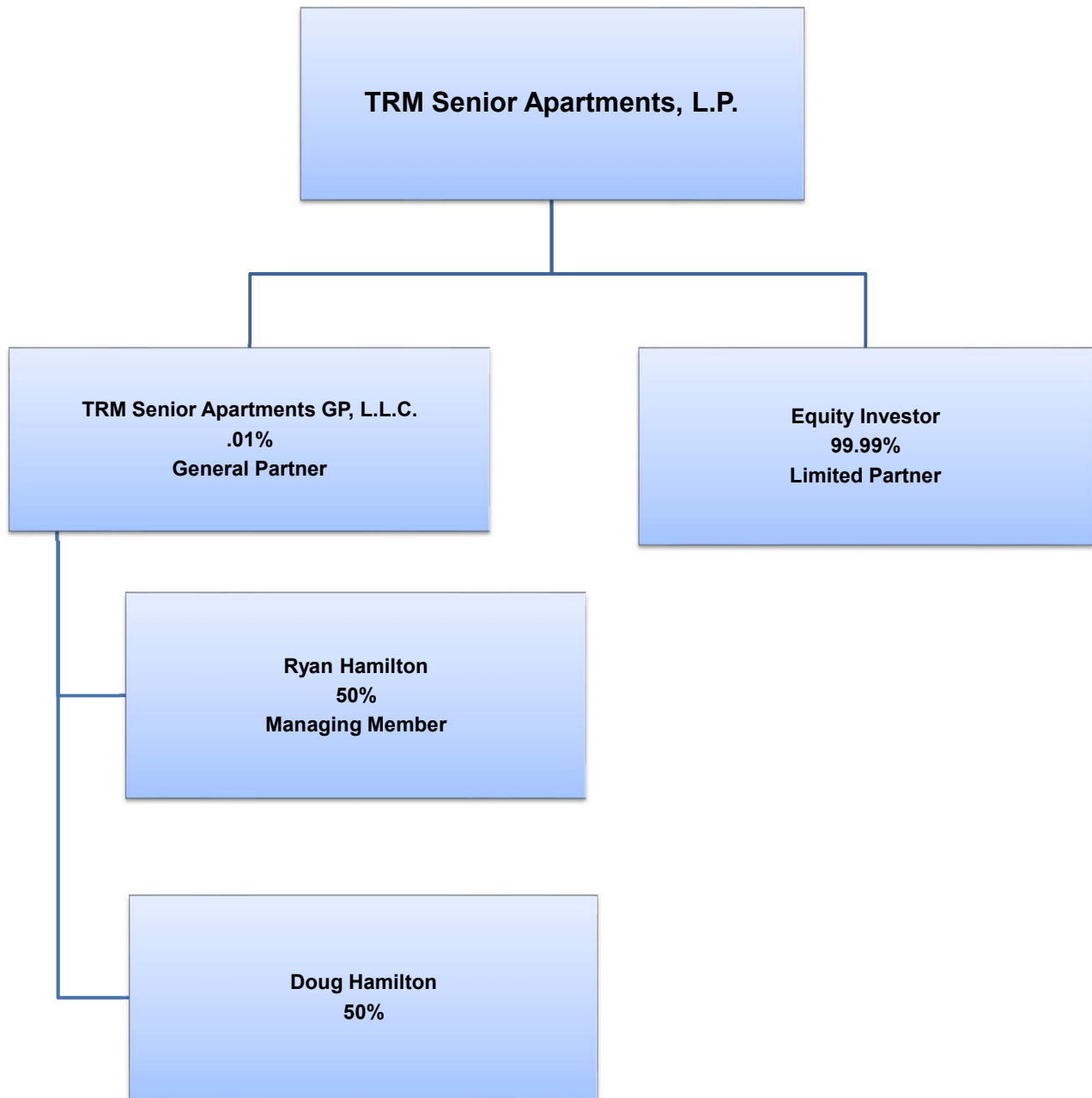
Ryan Hamilton
Managing Member of the GP

Enclosure; Current and Proposed Ownership Organization Charts

Ownership org chart - as currently approved



Ownership org chart - as requested



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BOARD ACTION REQUEST
HOME PROGRAM DIVISION
MAY 26, 2016

Presentation, Discussion, and Possible Action on Amendments to HOME Single Family Development (“SFD”) Household Commitment Contracts (“HCC”) issued under Administrator Agreement No. 11591 for the Development of three single family homes by WREM Literacy Group, Inc. under SFD Set-Aside 1001897

RECOMMENDED ACTION

WHEREAS, the Department executed a Reservation System Participation Agreement with WREM Literacy Group, Inc., (“WREM”) on May 9, 2013;

WHEREAS, WREM developed 11 new single family purchase homes for 11 households;

WHEREAS, eight of the 11 homes are complete and the Household Commitment Contract (“HCC”) end date for the three remaining houses is May 7, 2016;

WHEREAS, the HCC end dates for these houses were previously extended by three months, as authorized by the HOME Director and as permitted by the HOME Rules; and

WHEREAS, WREM has experienced additional delays in completing construction activities, and has requested an additional 90 days to complete construction;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the amendment to extend the end date of HOME HCCs for project numbers 40461, 40466, and 40467 to September 7, 2016.

BACKGROUND

On May 9, 2013, the Department executed a 24-month SFD Reservation System Participant Agreement (“RSP Agreement”) with WREM for the development of single family residential units targeting low-income homebuyers. The RSP Agreement allows WREM access to funds made available in the HOME Reservation System under the SFD set-aside, a Community Housing Development Organization (“CHDO”) activity.

WREM successfully completed eight homes under that agreement, and is working to complete the three remaining houses. Construction is approximately 60% complete on those three homes, and only finish out remains according to WREM. The construction timeframe was impacted by a particularly rainy spring season, as further detailed in WREM's extension request. WREM estimates that construction will be complete within the next 30 days, and that up to an additional 60 days will be needed to finalize loan closing on all three homes.

Based on WREM's construction progress, staff believes that the homes can be completed and the loans closed if the request for an additional 90 days is approved. Because the cumulative total of this extension request exceeds 12 months, the Executive Director does not have the authority to grant the extension and Board approval is necessary. Staff recommends approval of a three month extension to each of the remaining three HCCs through an amendment process, amending the end dates to September 7, 2016.



May 6, 2016

Mr. Tim Irvine
HOME Program Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78711-3941

Re: Request for an Extension of Contract to Complete Construction for Activities:
40461, 40466, 40467

Dear Mr. Irvine:

The WREM Literacy Group, Inc. proudly builds decent and affordable homes in partnership with TDHCA using HOME funds. We are currently in the process of completing the last three homes that were a part of our reservation under the HRA Disaster Relief and the SFD CHDO programs. With these completions, WREM Literacy Group, Inc. and WREM Literacy CHDO will have either sustained or enabled twenty-two homesteads between Waller and Ellis Counties.

During the completion of the projects captioned above, circumstances arose, which are preventing delivery of the finished construction within the designated time to complete. Therefore, the intent of this letter is to request an extension to complete the construction, which is resident in the 77445 zip code of Hempstead, TX, addressed as 1922, 1932, and 1942 4th Street --- activities, 40461, 40466, and 40467, Raymond George, Tysha Smith, and Latisha Coleman, respectively.

We are currently in the framing phase and are on task for delivery of a finished product by 30 June 2016. **We are requesting that the contract ending date is extended 90 days until 7 September 2016 for the following reasons:**

- 1) We closed on these projects in mid-September of 2015 and immediately commenced work. Unfortunately, we had been experiencing an unusual rainy season. Since that time, we have logged an exorbitant amount of bad weather days. The rainy season of 2015 is still affecting the soil content at these locations. We have had to be ingenious to pour concrete and acquire the framing packages. We used a pump to pump the concrete from the street. We gained approval from the City of Hempstead to allow dumping of the framing package in the street. We paid the framers to move it from the street to the slab. This circumvention allowed us to overcome the obstacle of flooding. Now, we are nearly working under the roof, where the weather will have less impact on scheduling.

WREM Literacy Community Housing Development Organization
709 Thompson Street * P O Box 575 * Prairie View, TX 77446
(936) 857-9129 (office) * (888) 968-4608 (fax)

- 2) Currently the homes have the foundations completed and the framing significantly underway. Two of the homes will be in the dry by Wednesday, 11 May 2016. The other will be in the dry by Friday of this same week. Also during this week, the plumbing is scheduled for top out as is the electrical and HVAC roughing.

Specifically, the following issues are preventing WREM from completing the construction by the current end date:

- a) Since the last extension, the rain has nearly made it impossible to work on this lot because the amount of fill needed to complete the foundation promotes ponding.
- b) We were waiting on the City of Hempstead to install power on our temporary poles. The rain created a backlog for the city as well, which caused a delay in processing our request for service.
- c) We also need this extension to allow the Loan Department a 45 day window to prepare the homebuyers for closing.

We have strategically circumvented the problems with the infrastructure. With an extension, we can successfully move these last three of our clients from the rent roll to homeownership. Our client, Raymond George has 5 kids. He and his family are homeless. The seven of them currently live in a crowded situation with family members. Latisha Coleman has four kids. She and her kids were living in a shelter when she was introduced to our program by the United Way. Now that her home has walls standing, she and her kids drive by daily, and are able to reach out and touch the promise of never having to live in another shelter. She is so thankful that she carved her favorite scripture on the brick ledge of the foundation. Tysha Smith is a hardworking young woman, whose ambition is to become a homeowner so she can create a decent and safe place to live for her and her future family. Building wealth and starting a family embody her dreams and have become her steadfast goal. By granting an extension to complete these homes, the partnership to bring homeownership into the reach of low-income citizens living in rural areas would have met its mission.

Collectively based on the delays previously cited, the process of completing the construction will be impacted for an additional 45 days. It is estimated that the time needed to complete the construction and install the permanent closing is 90 days.

To reiterate, the construction is nearly 60% complete on two and by 13 May 2016 will be on the third home as well. The most difficult part of the construction is nearly completed; then only finish out

Mr. Tim Irvine
Executive Director, TDHCA
Friday, May 6, 2015
Page 3

remains. The construction process has been impacted due to inclement weather and by waiting to be serviced by the City of Hempstead, who also has been impacted likewise. There will be no issues with

waiting on taps and water meters because this work has already been done. Based on our assessment, we predict that the construction will complete by 30 June 2016. Additionally, we estimate that TDHCA will need an additional 60 days to generate closing docs. Therefore, to facilitate a successful closing of the permanent loan, we are requesting that the contract ending date is extended an additional 90 days. We anticipate by August's end, we will have once again, successfully, aided in homeownership.

We implore you to allow us to finish what was started in Waller County. Since partnering with TDHCA to provide decent and affordable housing in rural areas, the WREM Literacy Group, Inc. has enabled homeownership for 11 renters, sustained homeownership for 6 households residing in unsafe housing, and restored homeownership for 2 families stricken by disaster ensuing from a fire. These last 3 bring the total of people serviced under our partnership to 22.

At the end of the road, this completed construction will have augmented the Waller County economy by nearly 2.3 million dollars --- raising morale, boosting business, and increasing tax revenue in the process. WREM is committed, accountable, and responsible in its efforts to deliver a high quality, timely, product within the budget. This year the weather has been a significant challenge in our delivery of service. It has been the primary reason for once again requesting that the Board extends another contract ending date.

If you need anything further to support the granting of this request, please do not hesitate to contact me. I am thanking you in advance for your expeditious attention to this matter.

Sincerely,
WREM Literacy Group, Inc.

Deborah M. Dennis
CEO

cc: Jennifer Molinari



**Progress of 1932 4th Street:
Electrical rough has completed on the
interior. Shingles are in the process of being
installed to complete the roofing.**

**The HVAC and plumbing trades will complete
on Monday. On task to complete by 30 June
2016.**

**Progress of 1932 4th Street:
Electrical rough has completed on the interior.
Shingles are in the process of being installed
to complete the roofing.**

**The HVAC and plumbing trades will complete on
Monday. On task to complete by 30 June 2016.**



**Progress of 1942 4th Street:
Wall, ceiling, and roof framing completed. Awaiting cornice installation.
This house is on task to complete by 30 June 2016.**



1h

BOARD ACTION REQUEST
NEIGHBORHOOD STABILIZATION PROGRAM
MAY 26, 2016

Presentation, Discussion, and Possible Action regarding Authorization to Release a Notice of Funding Availability (“NOFA”) for the Programming of Program Income (“PI”) from the Neighborhood Stabilization Program Round One (“NSP1”).

RECOMMENDED ACTION

WHEREAS, the Neighborhood Stabilization Program Round One (“NSP1”) is a HUD-funded program authorized by HR 3221, the “Housing and Economic Recovery Act of 2008” (“HERA”), and administered by TDHCA to redevelop or acquire and hold abandoned and foreclosed properties in areas demonstrating declining property values resulting from excessive foreclosures;

WHEREAS, the Department has utilized NSP1 funds to allow Subrecipients to purchase over 600 Land Bank properties across the State, some of which will convert to their final eligible use with NSP1 PI in the form of homebuyer assistance for the purchase of new single family homes that will help stabilize local real estate markets;

WHEREAS, the Department has collected approximately \$9 million in NSP1 repayments, also known as "PI";

WHEREAS, in order to facilitate bringing the Land Bank properties into a final eligible use within the HUD required deadlines, the Department seeks to facilitate payment of Developer Fees and soft costs to developers, activity delivery funds and holding costs to Subrecipients that own NSP1 Land Bank properties which includes local nonprofit partners that manage Land Bank properties on behalf of the Subrecipients; and

WHEREAS, the Department desires to support the construction of single family homes on Land Bank properties, to facilitate homeownership for income qualified families, and to mitigate the risk of Land Bank properties not achieving their required final eligible use in a timely manner;

NOW, therefore, it is hereby

RESOLVED, that the Board authorizes the release of approximately \$5 million of NSP1 PI through the publication of a NOFA for applicants that own and/or manage NSP Land Bank properties;

FURTHER RESOLVED, that the Board authorizes staff to make any prudent and necessary revisions to the NOFA in accordance with, and limited by, the NSP regulations;

FURTHER RESOLVED, that the Board authorizes staff to award and commit funds to applicants in response to and in accordance with this NOFA; and should

additional funds become available, they may in the Executive Director or his designees sole discretion, be added to the original award under the NOFA;

FURTHER RESOLVED, the Board authorizes, empowers and directs staff, on behalf of the Department, to execute any documents, instruments and writings and perform such other acts necessary to effectuate the foregoing; and

FURTHER RESOLVED, that the Board authorizes staff to draft and execute Program Agreements with NSP awardees to facilitate the Department's payment of Developer Fees and soft costs to all awardees that own and/or manage NSP1 Land Bank properties including activity delivery and holding costs for Subrecipients.

BACKGROUND

The Neighborhood Stabilization Program Round One ("NSP1") is a HUD-funded program authorized by HR 3221, the "Housing and Economic Recovery Act of 2008" ("HERA"), as a supplemental allocation to the Community Development Block Grant ("CDBG") Program through an amendment to the existing State of Texas 2008 CDBG Action Plan. The purpose of the program is to redevelop into affordable housing, or acquire and hold, abandoned and foreclosed properties in areas that are documented to have the greatest need for arresting declining property values resulting from excessive foreclosures. NSP1 activities have generated PI through payments from homeowner sales loan payoffs and amortized homeowner and rental development loans.

TDHCA has utilized NSP1 funds to allow Subrecipients to purchase over 600 Land Bank properties across Texas. For NSP1 Land Bank properties the deadline to enter into a final eligible use is within ten years from the date of purchase. The use of NSP1 PI to assist eligible households with the purchase of new single family homes will support the stabilization of local real estate markets and enhance timely placement of properties into an eligible use.

Staff recommends that the Department program a portion of the accumulated NSP1 PI as homebuyer assistance for the purchase of new single family homes on Land Bank properties. For ease of administration, the funds will be distributed via Program Agreements with awardees owning and/or managing Land Bank properties. Eligible entities are only those entities that qualify as developers under federal NSP1 Notices and that own and/or manage existing NSP1 Land Bank properties. One of the attributes of the NOFA is that the "set-aside requirement" for NSP1, which guides the proportion of grant funds used to serve households at or below 50% of Area Median Income ("AMI") will not be applied to this activity because it has already been met through other NSP1 activities.

This NSP1 PI NOFA will provide homebuyer assistance in the form of a subordinate deferred-payable 0% loan of up to \$30,000 for eligible households whose income is 51% to 120% of AMI. Eligible households whose income is at or below 50% of AMI may receive a 0% deferred forgivable loan. The homebuyer assistance may be utilized for reasonable closing costs, down payment assistance not to exceed 50% of the required down payment by the 1st lien lender, principal reductions and gap financing. All Land Bank properties must meet a final eligible use. The NOFA will also utilize NSP PI funds to help support the entities in their work on this activity within HUD guidelines through payment of Developer Fees, and soft costs to the organizations that own and/or manage NSP1 Land Bank properties including activity delivery and holding costs for Subrecipients.

1i

BOARD ACTION REQUEST
SECTION 8 HOUSING CHOICE VOUCHER PROGRAM
MAY 26, 2016

Presentation, Discussion and Possible Action on Approval of the Department's Administrative Plan for the Section 8 Housing Choice Voucher Program ("HCVP") Administered by TDHCA in its role as a Public Housing Authority

RECOMMENDED ACTION

WHEREAS, the Department operates as a Public Housing Authority ("PHA");

WHEREAS, the PHA must adopt a written administrative plan (the "Plan") that serves as the "standard operating procedures" for the Department and establishes policies for administration of the state's HCVP in accordance with HUD requirements;

WHEREAS, 24 CFR 982.54 provides what policies must be addressed in the Plan and Department staff confirms that those required policies are included in the attached Plan;

WHEREAS, the Plan must be formally adopted by the PHA Board or "other authorized PHA official" and in light of the documents procedural nature staff believes that in the future the Deputy Executive Director over Community Affairs or Executive Director are a sufficient level of approval to be deemed such "authorized PHA officials" for future approvals, unless otherwise required by HUD or the PHA Plan;

WHEREAS, the Plan is a supporting document to the PHA Plan (a separate plan approved annually by the Board and requiring approval from HUD);

WHEREAS, the Plan must be available for public review and will be made available on the Department's website on an ongoing basis; and

WHEREAS, periodically federal guidance is released that may warrant changes in the Plan and staff is now presenting a Plan reflective of new guidance from HUD on a variety of issues over the last several years;

NOW, therefore, it is hereby

RESOLVED, that the Plan is approved as presented, with authorization to make such non-substantive technical and stylistic corrections as necessary;

FURTHER RESOLVED, that the Plan will be published and available for ongoing review on the Department's website; and

FURTHER RESOLVED, that the Deputy Executive Director and Executive Director are hereby deemed authorized PHA officials for purposes of future Plan approvals, as well as other issues that may be handled by authorized PHA officials as stipulated by HUD.

BACKGROUND

The Texas Department of Housing and Community Affairs (the "PHA" or the "Department") serves as a public housing authority for the purpose of receiving funding for the HCVP from the Department of Housing and Urban Development. The Department enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. Administration of the HCV program and the functions and responsibilities of the PHA staff shall be in compliance with the PHA's personnel policy and HUD's Section 8 regulations as well as all federal, state and local fair housing laws and regulations. The PHA must establish policy and procedures to clarify federal requirements and to ensure consistency in program operation.

The purpose of the HCVP is to provide rental assistance to eligible households. The HCVP offers mobility in housing choice to eligible households so that they may search for suitable housing anywhere in the PHA's jurisdiction and may also potentially be eligible to move outside of the PHA's jurisdiction through HUD-permitted "portability" of vouchers.

The U.S. Department of Housing and Urban Development promulgates the rules and regulations of the HCVP. The PHA is afforded choices in the operation of the program that are included in the PHA's Administrative Plan, a document approved by the Board of the PHA or other authorized PHA official. Because this document serves as the standard operating procedures, so to speak, of the program, and such programmatic procedures are not generally presented to the Board, but handled by the Executive Director, staff is recommending that the Board determine that the Executive Director and the Deputy Executive Director over Community Affairs qualify as an "authorized PHA official" for purposes of revising and approving this Plan as needed in the future. Staff will continue to present the Board with the annual and 5-year PHA Plans (documents distinct from the Administrative Plan) and any other issues that require Board approval by HUD.

The PHA 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.

The HCVP is the only Department program covered by this Administrative Plan.

The Plan, attached, covers the following required policy areas.

- General introduction and overview of the program (Chapter 1);
- Procedures for assisting households with disabilities, improving access for persons with Limited English Proficiency, affirmatively furthering fair housing and handling of discrimination complaints, for instance if a household believes illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Occupancy policies and eligibility criteria, including PHA screening of applicants for family behavior or suitability for tenancy, definition of what group of persons may qualify as a 'family', handling of family

composition changes, handling of household absence from the unit, and definition of when a family is considered to be 'continuously assisted' (Chapter 3);

- Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list (Chapter 4);
- Issuing or denying vouchers, including PHA policy governing the voucher term and extensions and suspensions of the voucher term, and subsidy standards (Chapter 5);
- Process for determining income and establishing the family share and PHA subsidy (Chapter 6);
- Process for verifying household information including legal identifying, age, family relationships, and for verifying incomes, assets and deductions (Chapter 7);
- The method of determining the rent reasonableness of the unit, and guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- General leasing policies and the handling of changes in the lease or rent (Chapter 9);
- The handling of moves, restrictions if any, on the number of moves by a participant family, and portability of vouchers (Chapter 10);
- Annual reexaminations and interim redeterminations of family income and composition (Chapter 11);
- Issues and processes related to termination of assistance or tenancy including the grounds for termination (Chapter 12);
- Owner qualifications, disapproval of owners, and the handling of contracts with owners and policy relating to encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Processes for preventing, detecting and investigating errors or program abuse (Chapter 14);
- Policies concerning special housing types such as Single Room Occupancy units, Cooperative Housing, Manufactured Housing congregate housing (Chapter 15); and
- Informal review procedures for applicants and informal hearing procedures for participants; establishing and revising voucher payment standards; utility allowances; handling of payments when a family owes the PHA funds; and processes for recordkeeping and reporting (Chapter 16).

TDHCA's Voucher Program

- TDHCA provides:
 - Tenant based vouchers through the Section 8 Housing Choice Voucher Program ("HCVP") with an average monthly housing assistance payment ("HAP") of \$475,000 (\$5.7 million per year), and
 - Project Based vouchers to serve veterans for 20 units at one property, Freedom's Path, in Kerrville through the Veterans Affairs Supportive Housing ("VASH") Program
- For the HCVP TDHCA administers approximately 850-900 vouchers

- The jurisdiction covered by TDHCA's HCVP is 29 counties comprised of primarily rural counties scattered within Central Texas. For one of the more populous counties, Bexar, only a part of the county is within the Department's jurisdiction.
- Over the last two years the Board has authorized the expansion of the program to absorb vouchers previously operated by the Navasota Housing Authority and the Alamo Area Council of Government.
- The program operates with multiple waiting lists – 6 that cover different areas within the 29 counties, one that covers the Project Access Program, and one that is related to the VASH project based property which is maintained by the Department of Veterans Affairs.
- Years ago, the HCVP was almost completely administered through a group of subrecipients called Local Operators ("LOs"). Over time TDHCA has been able to reduce that intermediary role and now administers most of its vouchers directly. At this time, TDHCA contracts with LOs in only 2 areas – Galveston, and Waller County. This contraction of using LOs has allowed the Department to be more efficient with its administrative funds.

How a Section 8 Housing Choice Voucher Works

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



Texas Department of Housing and Community Affairs

Section 8 Housing Choice Voucher Program Administrative Plan

May 2016

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Chapter 1: OVERVIEW OF THE PHA, THE PROGRAM AND THE PLAN

PART I: INTRODUCTION

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

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

The Section 8 Housing Choice Voucher Program was created by the Housing and Community Development Act of 1974 and amended by the Housing and Community Development Act of 1981, the Housing and Urban-Rural Recovery Act of 1983, the Technical Amendments Act of 1984, the Housing and Community Development Act of 1987, the National Affordable Housing Act of 1990, and the Housing and Community Development Act of 1992.

Through the issuance of three "conforming" rules in 1994, 1995, and 1998, HUD combined the Rental Certificate and Rental Voucher Programs to the extent permitted by statute. In October 1998, Congress passed long-awaited housing reform legislation, which includes a full merger of the Certificate and Voucher Programs (Quality Housing and Work Responsibility Act of 1998).

Administration of the housing programs and the functions and responsibilities of the Department staff are subject to the Personnel Policies and Procedures of the Department, the Equal Opportunity Plan, and the Section 8 Administrative Plan Operations/Procedures Manual. All Federal, State, and local housing laws will be followed and the Department will comply with Federal and State Fair Housing regulations.

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

In 1978, the state agency that was later to become TDHCA conducted a survey to identify localities that would be interested in participating in a rural Section 8 program. From among the respondents to this survey, 18 cities, 6 counties, 2 housing authorities, and 1 community action agency were included in the creation of the Department's HCVP and signed Local Operator ("LO") contracts with the Department. The first Housing Assistance Payment Program contract was executed in September 1979. That structure has evolved over time and in an effort to streamline work and efficiently use administrative funds, the Department has reduced the number of LOs, some of those localities have withdrawn from the program, some areas have been absorbed, and more vouchers are fully administered by Department staff.

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

ORGANIZATIONAL SET UP

The HCVP at TDHCA (also called "Section 8") is overseen by the Executive Director, the Deputy Executive Director, and the Director of the Community Affairs Division of the Department. Section 8 has a Manager, several Regional Coordinators, and an Occupancy Specialist. Outreach activities and initial inspections are conducted by the LOs (when utilized) or Department staff which are contracted to administer the program in specific localities.

The Local Operators (“LOs”) are separate entities with which the Department may contract to assist with administration of the HCV Program on a local level. The Department chooses to use LOs when most efficient, but also directly administers vouchers with no local representative. The LO representative works as an agent of the Department to administer the Section 8 HCV program locally in the cities and/or areas covered under the LO contract. The primary responsibilities of a Local Operator, when utilized, are to:

1. Assist in receiving and reviewing applications from clients for participation in the program;
2. Assist in verifying family income, employment requirements and other factors relating to eligibility and the amount of assistance;
3. Assist in issuance of Housing Choice Vouchers and brief selected eligible families for participation in the program in a manner prescribed by the Department;
4. Perform any necessary Housing Quality Standard (“HQS”) inspections for new admissions and renewals;
5. Notify owners and families of property inspection determinations; and
6. Assist in processing changes in income and changes in household requests in accordance with department policies.

TDHCA’S CODE OF CONDUCT

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

PART II: THE HOUSING CHOICE VOUCHER (“HCV”) PROGRAM

HCV PROGRAM BASICS

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

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

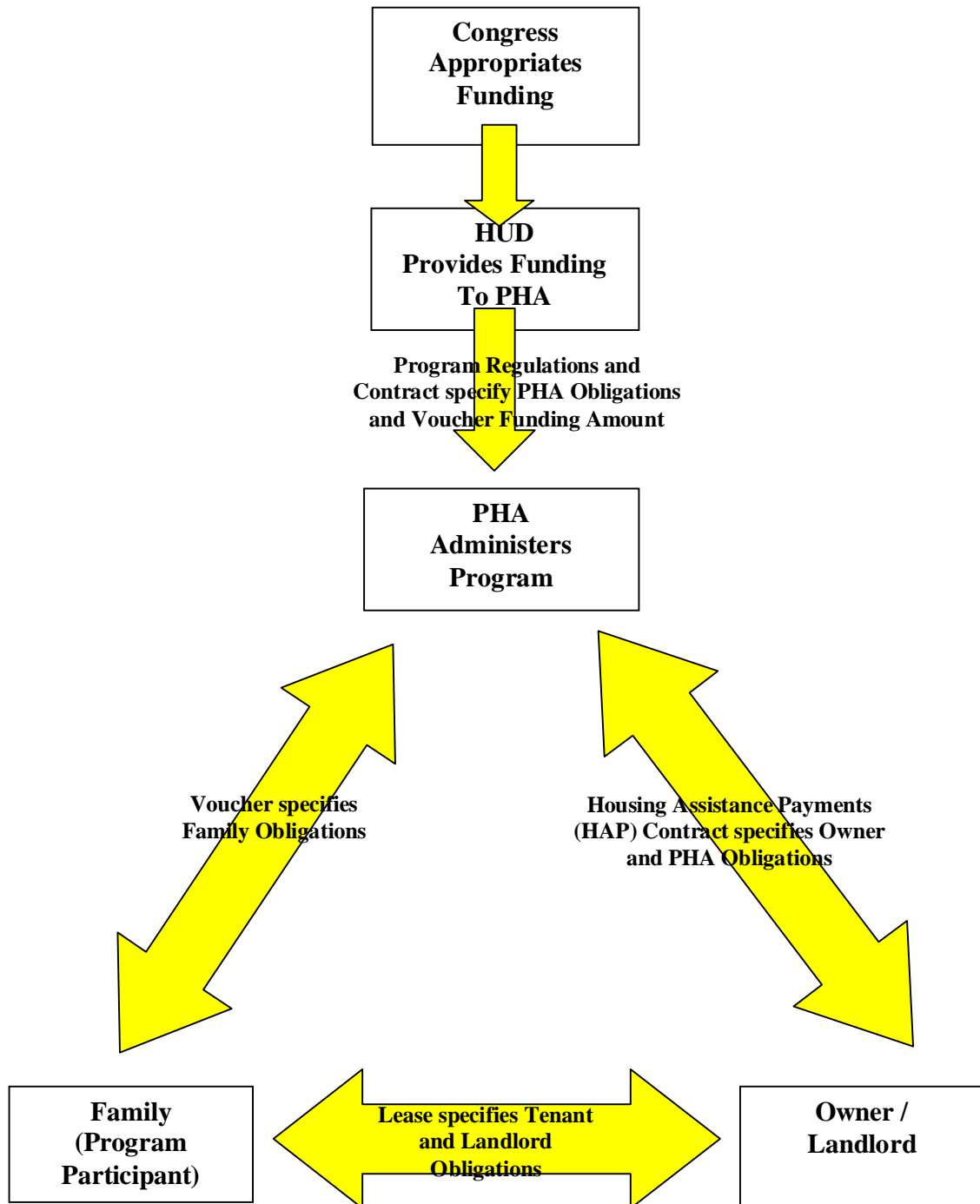
When a family is determined to be eligible for the program and funding is available, the PHA issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, the PHA will enter into a contract with the owner and the family will enter into a lease with the owner. 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 PHA continues to make payments to the owner as long as the family is eligible and the housing unit continues to qualify under the program.

THE HCV PARTNERSHIPS

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

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



What does HUD do?

HUD has the following major responsibilities:

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

What does the PHA do?

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

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

What does the Owner do?

The owner has the following major responsibilities:

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

- 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 PHA with complete and accurate information, determined by the PHA to be necessary for establishing program eligibility;
- Make their best and most timely efforts to find a place to live that is suitable for them and that qualifies for the program;
- Cooperate in attending all appointments scheduled by the PHA;
- Allow the PHA 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 PHA and the owner before moving or termination the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify the PHA of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

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

APPLICABLE REGULATIONS

Applicable regulations include but are not limited to:

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

PART III. THE HCV ADMINISTRATIVE PLAN

OVERVIEW AND PURPOSE OF THE PLAN

HUD requires the administrative plan. The purpose of the administrative plan is to establish policies for carrying out the program in a manner consistent with HUD requirements and local goals and objectives contained in the PHA's agency plan. This administrative plan is a supporting document to the PHA agency plan, and is available on the Department's website for public review as required by 24 CFR Part 903. The Plan is organized to provide information to users in particular areas of operation.

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

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

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

CONTENTS OF THE PLAN (24 CFR §982.54)

HUD regulations contain a list of what must be included in the administrative plan. The PHA administrative plan must cover PHA policies on these subjects:

- Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list (Chapter 4);
- Issuing or denying vouchers, including PHA 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 PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to the PHA for a special purpose (e.g., persons with disabilities), including funding for specified families or a specified category of families (Chapter 4);
- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12) ;
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 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 PHA of amounts the family owes the PHA (Chapter 16);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- PHA screening of applicants for family behavior or suitability for tenancy (Chapter 3).

UPDATING AND REVISING THE PLAN

The Department will revise this administrative plan as needed to comply with changes in HUD regulations. The May 2016 Plan is being approved by the Department's Governing Board ("Board"), the pertinent sections included in the Agency Plan, and a copy provided to HUD. Subsequent plan changes are authorized by the Department's Board to be implemented by either the Executive Director or Deputy Executive Director, of the Department, both duly authorized PHA officials.

TDHCA Policy

The Department will review and update the plan as needed, to reflect changes in regulations, PHA operations, and to ensure staff consistency in operation. The Plan may be approved for changes by the Deputy Executive Director or Executive Director as PHA Officials. Certain changes such as approval of a new service area or activity, or decisions where HUD requires Board approval will be taken back to the Department's Board.

Chapter 2: FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

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

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

Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of the PHA 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 and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice ("DOJ"), issued May 17, 2004.

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

PART I: NONDISCRIMINATION

OVERVIEW

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

- 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 2013 ("VAWA"); and
- The Equal Access to Housing in HUD Program Regardless of Sexual Orientation or Gender Identity Final Rule, published in the Federal Register, February 3, 2012.

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

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

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

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

The PHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR §100.202(c)]. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA will not place this information in the tenant file.

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

NONDISCRIMINATION

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

The PHA 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 because they are members of a protected class.

PROVIDING INFORMATION TO FAMILIES AND OWNERS

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

TDHCA Policy

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

- 1) The Department or its Local Operator (“LO”) representative shall provide all voucher recipients the HUD Fair Housing Guide that outlines the Fair Housing Act, protection available to persons with disabilities, and how to file a complaint.
- 2) The Department or its LO representatives offices display in English, Spanish, or other appropriate languages the Equal Housing Opportunity Posters. Posters describe fair housing law and how to file a complaint.
- 3) The Department or its Local Operator (LO) representative shall provide all applicants and voucher recipient’s information on how to file a fair housing complaint, including the provision of the toll-free number for the Fair Housing Complaint Hotline: 1-800-669-9777. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 1-800-887-8339.

DISCRIMINATION COMPLAINTS

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

TDHCA Policy

For families and/or individuals who report apparent discrimination in obtaining assisted housing, the Department or its Local Operator (“LO”) representative shall assist them by providing the family/individual with a HUD Housing Discrimination Information Form HUD-903.1. The individual can complete this form and report apparent discrimination to the Fort Worth HUD Office of Fair Housing and Equal Opportunity. The Department has a comprehensive website dedicated to Fair Housing information; tenants can find information there that will direct them to the appropriate contacts for complaints including the process outlined in 10 Texas Administrative Code (“TAC”) §1.2

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

OVERVIEW

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

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

TDHCA Policy

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

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

DEFINITION OF REASONABLE ACCOMMODATION

A person with a disability may require special accommodations in order to have equal access to the HCV program. The types of reasonable accommodations the PHA 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 PHA, or result in a "fundamental alteration" in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

TYPES OF REASONABLE ACCOMMODATIONS

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

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

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 PHA 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 PHA's programs and services.

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

TDHCA Policy

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

VERIFICATION OF DISABILITY

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

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

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

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

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

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

APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION

Consistent with the joint statement of the Departments of HUD and Justice relating to reasonable accommodations under the fair housing act, the PHA 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 PHA, or fundamentally alter the nature of the PHA's HCV operations (including the obligation to comply with HUD requirements and regulations).

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

Before making a determination whether to approve the request, the PHA 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 PHA may verify the need for the requested accommodation.

TDHCA Policy

After a request for an accommodation is presented to the Department, the Department will communicate with the landlord and then respond, in writing, within 10 business days.

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

If the Department believes that the family has failed to agree to a reasonable alternative accommodation after interactive discussion and negotiation, the Department will notify the family, in writing, of its determination within 10 business days from the date of the most recent discussion or communication with the family.

Protected health information will not be retained in particular files in the case of Project Access.

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

PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS

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

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

TDHCA Policy

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

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

PHYSICAL ACCESSIBILITY

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

- PIH 2002-01 (HA), Accessibility Notice;
- Section 504 of the Rehabilitation Act of 1973;
- The Americans with Disabilities Act of 1990;
- The Architectural Barriers Act of 1968; and
- The Fair Housing Act of 1988.

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

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

When issuing a voucher to a family that includes an individual with disabilities, the PHA will include a current list of available accessible units known to the PHA, 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 (unless required by a different funding source) and may require that the unit be restored to its original state at the family's expense when the family moves.

DENIAL OR TERMINATION OF ASSISTANCE

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

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

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

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

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

OVERVIEW

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

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

The PHA 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 PHA 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 PHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the PHA.

ORAL INTERPRETATION

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

TDHCA Policy

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

WRITTEN TRANSLATION

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

TDHCA Policy

In order to comply with written-translation obligations, the Department will provide written Spanish or other appropriate language versions of all materials in the pre-application and tenant briefing packet.

Part IV: TDHCA POLICY – AFFIRMATIVELY FURTHERING FAIR HOUSING

OVERVIEW

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

Offering Housing Choice Vouchers are one of the most responsive actions that TDHCA, as a Public Housing Authority, can take to offer meaningful housing choice and, thereby, overcome impediments to housing choice.

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

Chapter 3: ELIGIBILITY

INTRODUCTION

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

The PHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the PHA.

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

This chapter contains three parts:

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

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

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

PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

OVERVIEW

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

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

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, a disabled person, near elderly person, or any other single person; or group of persons residing together.

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

TDHCA Policy

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

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

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

HEAD OF HOUSEHOLD [24 CFR §5.504(B)]

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

TDHCA 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. The head of household is

responsible for ensuring that the family fulfills all of its responsibilities under the program, alone or in conjunction with a co-head or spouse.

SPOUSE, CO-HEAD, AND OTHER ADULT

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

Spouse means the marriage partner of the head of household.

TDHCA Policy

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

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

TDHCA Policy

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

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

FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY

Family Break-up [24 CFR §982.315]

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

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

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.

TDHCA Policy

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

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

DEPENDENT [24 CFR §5.603]

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

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

Joint Managing Conservatorship of Dependents

TDHCA Policy

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

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

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

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

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

Elderly and Near-Elderly Persons, and Elderly Family [24 CFR §§5.100 and 5.403 FR Notice 02/03/12]

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

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

An elderly family is one in which the head, spouse, co-head, or sole member is at least sixty-two years of age, or disabled or handicapped and may include two or more elderly, disabled or handicapped persons living together, or one or more such persons living with a live-in aide who is determined to be essential to his or her care and well being. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

Persons with Disabilities and Disabled Family [24 CFR §5.403, FR Notice 02/03/2012]

Persons with Disabilities

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities for the purposes are provided in Chapter 2.

These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

Person with disabilities:

- (1) Means a person who:
 - (i) Has a disability, as defined in 42 U.S.C. §423;
 - (ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
 - (A) Is expected to be of long-continued and indefinite duration;
 - (B) Substantially impedes his or her ability to live independently, and
 - (C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
 - (iii) Has a developmental disability as defined in 42 U.S.C. §6001.
- (2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;
- (3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and
- (4) Means "individual with handicaps," as defined in 24 CFR §8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

As discussed in Chapter 2, the PHA 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 co-head is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6.

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

GUESTS [24 CFR §5.100]

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

TDHCA Policy

The length of stay for guests is usually defined by the landlord and indicated in their lease. For the Department HCV program purposes, a guest can remain in the assisted unit no longer than 30 calendar days in a 12-month period. If any individual remains in the unit for more than 30 consecutive days, the head of household must report in writing the additional person(s), and request approval from the owner/manager and the Department to add the family member to the lease and recalculate eligibility. Each

visit cannot exceed 14 consecutive days except for guests and their dependents seeking temporary sanctuary from family violence, as defined by Section 71.004, of the Texas Family Code, for a period that does not exceed thirty days.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household more than 51 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 30 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

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

FOSTER CHILDREN AND FOSTER ADULTS

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

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

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

TDHCA 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.

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

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

ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

TDHCA Policy

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

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

other good cause. The Department will respond in within 10 calendar days of the receipt of the written request.

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

Absent Students

TDHCA 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 Department indicating that the student has established a separate household or the family declares that the student has established a separate household.

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

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

TDHCA Policy

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

Absent Head, Spouse, or Co-head

TDHCA Policy

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

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

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

TDHCA Policy

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

Return of Permanently Absent Family Members

TDHCA Policy

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

Absence Due to Incarceration

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

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

LIVE-IN AIDE (24 CFR §982.316)

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

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

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

TDHCA Policy

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

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

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

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

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

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

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

PART II: BASIC ELIGIBILITY CRITERIA

INCOME ELIGIBILITY AND TARGETING

Income Limits

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

Types of Low-Income Families

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

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

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

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

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

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

- A very low-income family
- A low-income family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4]

TDHCA Policy

The Department 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 Department.

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

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

TDHCA Policy

The Department will provide Housing Choice Vouchers promptly to income eligible individuals and families in communities impacted by a disaster which may include, but is not limited to, communities with a disaster declaration or documented extenuating circumstances such as imminent threat to health and safety.

The preference will cover only the areas where the Department currently has oversight on the Section 8 program. Requests for the preference must be made within 90 days of the disaster and may result in the disaster impacted person or family receiving assistance before someone currently in a waiting list.

The Department also provides a preference for Project Access applicants. The Project Access program utilizes Section 8 Housing Choice Vouchers administered by TDHCA to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing.

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

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

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

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

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

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

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

Declaration [24 CFR §5.508]

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

U.S. Citizens and Nationals

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

TDHCA Policy

In addition to signing a citizenship declaration, family members who declare citizenship or national status may be required to provide any of the following additional documentation upon the Department's request:

- a. United States passport;
- b. Resident Alien card;
- c. Registration card;
- d. Social Security card; or
- e. Other appropriate documentation.

Eligible Non-citizens

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

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

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

TDHCA Policy

The Department must conduct primary verification of eligible immigration status through the INS automated system, Systematic Alien Verification for Entitlements ("SAVE").

Persons claiming eligible immigration status must provide all of the following evidence:

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

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

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

1. Assistance to an applicant may not be delayed, denied, or terminated, if:
 - a. The primary and secondary verification of any immigration documents that were submitted in a timely manner has not been completed;
 - b. The family member of whom required evidence has not been submitted has moved;
 - c. The family member who is determined not to be in an eligible immigration status following Department of Homeland Security verification has moved;
 - d. The Department of Homeland Security appeals process has not been concluded;
 - e. For a tenant, the Department hearing process has not be concluded;
 - f. Assistance is prorated; and/or
 - g. Assistance for a mixed family is continued.
2. Assistance to an applicant shall be denied and a tenant's assistance shall be terminated upon the occurrence of any of the following:

- a. Evidence of citizenship (i.e., the declaration) is not submitted in a timely manner;
 - b. Evidence of citizenship and eligible immigration status is submitted in a timely manner, but Department of Homeland Security primary and secondary verification does not verify eligibility immigration status;
 - c. The family does not pursue Department of Homeland Security appeal or LO information hearing rights; and/or
 - d. Department of Homeland Security appeal and informal hearing rights are pursued, but the final appeal or hearing decision is decided against the family member.
3. Notice must be given to the family and shall advise:
- a. That financial assistance or housing will be denied or terminated, and provide a brief explanation of the reasons;
 - b. That they may be eligible for proration of assistance;
 - c. In the case of a tenant, the criteria and procedures for obtaining relief for mixed families and other families; and
 - d. Any future appeal rights have been exercised.

Note: An applicant family without any citizens or members with eligible immigration status is not eligible for assistance.

Ineligible Non-citizens

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

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

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

Mixed Families

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

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

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

TDHCA Policy

The Department will not assist a family before the verification of at least one family member. When the Department determines that an applicant family does not include any citizens, nationals, or eligible non-

citizens, following the verification process, the family will be sent a written notice within 10 business days of the determination.

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

Informal hearing procedures are contained in Chapter 16.

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

For new occupants joining the assisted family the PHA 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 PHA 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.

TDHCA Policy

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

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

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

If a new member is added to the family, the family must submit the new member's SSN documentation at the time they are added to the household. If any member of the family obtains a previously undisclosed SSN, or has been assigned a new SSN, the documentation must be submitted within 30 calendar days or any approved extensions. Extensions shall not be for more than 60 additional days.

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

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

The PHA 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)].

TDHCA Policy

A consent form must be completed whenever a new adult joins an HCV household. Whenever a current household member turns 18 years of age, they will not be required to sign a consent form until the family's

annual appointment unless they are earning income, which would require them to report their income within 30 days of turning 18.

STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION

[24 CFR §5.612 AND FR NOTICE 4/10/06]

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

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the student's eligibility must be examined along with the income eligibility of the student's parents.

In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from his/her parents in accordance with the PHA policy, the income of the student's parents will not be considered in determining the student's eligibility.

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

Definitions

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

Dependent Child

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

Independent Student

TDHCA Policy

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

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

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

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

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

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

Institution of Higher Education

The PHA 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

TDHCA 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, foster parents, godparents, etc).

Veteran

TDHCA Policy

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

Determining Student Eligibility

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

TDHCA Policy

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

- Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program.
- Determine whether the student is independent from his/her parents in accordance with the definition of independent student in this section.
- Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program.

- If the PHA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, PHA will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 14.

Determining Parental Income Eligibility

TDHCA 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 PHA will determine the income eligibility of the student's parents as follows:

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

OTHER CRITERIA FOR ADMISSIONS [24 CFR §982.552(B)]

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

PART III: DENIAL OF ASSISTANCE

OVERVIEW

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

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

Denial of assistance includes any of the following:

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

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

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

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

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

HUD requires the PHA 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 PHA to admit an otherwise-eligible family if the household member has completed a PHA-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).

TDHCA Policy

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

- The PHA determines that any household member is currently engaged in the use of illegal drugs, including the distribution, possession, or sale.

TDHCA Policy

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

- The PHA 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.

TDHCA Policy

The Department will consider all credible evidence, including but not limited to, any record of convictions, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. The Department may waive admission/denial if:

- the person demonstrates to the Department's satisfaction that the person is no longer engaging in drug-related criminal activity or abuse of alcohol;
- has successfully completed a supervised drug or alcohol rehabilitation program; or

- has otherwise been rehabilitated successfully, is participating in a supervised drug or alcohol rehabilitation program.
- Any household member 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
- Failure to provide verification of social security number as required by HUD via HUD's Rent Reform Notice effective January 2010.

OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE

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

Criminal Activity [24 CFR §982.553]

HUD permits, but does not require, the PHA to deny assistance if the PHA determines that any household member has been convicted during a reasonable time before the family would receive assistance, certain types of criminal activity.

TDHCA Policy

If any household member has been convicted in any of the following criminal activities within the past five (5) years, the family will be denied assistance.

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

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

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

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

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

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

Conviction for drug-related or violent criminal activity within the past 5 years.

Any record of eviction from public or privately owned housing as a result of criminal activity within the past 5 years.

A record that an applicant or household member has been paroled or released from a facility for violence to persons or property within the past three (3) years.

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

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

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

TDHCA Policy

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

The Department will deny assistance to an applicant family if:

- The family does not provide information that the Department or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to the Department.
- Any family member has been evicted from federally assisted housing in the last five (5) years.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal or state housing program.
- The family owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs, unless the family repays the full amount of the debt prior to being selected from the waiting list
- If the family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- The family has breached the terms of a repayment agreement entered into with the Department or an owner, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.
- The family has failed to meet the eligibility criteria described in Section II of this chapter.
- The family has failed to provide information required within the period specified (the applicable dates are contained in the letters from the Department) in the application process.
- The family has refused to sign or submit required consent forms that are provided by the Department for verifying employment and income information.
- The family has violated any family obligation listed on the Housing Choice Voucher.
- A household member is subject to the State of Texas Sex Offender Statue and/ or any other state registration requirements where the family member is known to have resided.
- A family member has engaged in or threatened violent or abusive behavior toward Department personnel.

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

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

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

Time Frames for Denial

Generally, applicants may be denied admission to the program for the following time frames, which shall begin on the date of application, unless otherwise provided for herein below:

1. Denied admission for one year for violation of voucher and illegal use, or possession for personal use, of a controlled substance or abuse of alcohol.
2. Denied admission for three (3) years for the following:

Persons evicted from Public Housing, Indian Housing, Section 8 program, or Section 23 programs because of drug-related criminal activity are ineligible for admission for a three-year period beginning on the date of such eviction.

The Department can waive this requirement if the person demonstrates to the Department's satisfaction successful completion of a rehabilitation program approved by the Department, or the circumstances leading to the eviction no longer exist.
3. Denied admission for five (5) years for the following:
 - a. Fraud – giving false information on the application, failure to report changes in household composition or income is considered fraud;
 - b. An arrest or conviction record that indicates that the applicant may be a threat and/or negative influence on other residents. The five years shall begin on the date of the last reported act, completion of sentence and/or probation period;
 - c. 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
4. Denied admission for ten (10) years for a conviction of drug trafficking;
5. Denied admission for life to any household that includes any individual who is subject to a lifetime registration requirement under a state sex offender registration program; or
6. Denied admission for life to any applicant who has been convicted of manufacturing or producing methamphetamine (commonly referred to as "speed") on the premises of the assisted housing. A premise is defined as the building or complex in which the dwelling unit is located, including common areas and grounds.

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

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

If the PHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the 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 PHA has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The PHA may opt to conduct additional screening to determine whether an applicant is likely to be a suitable tenant.

TDHCA Policy

The Department will not conduct additional screening to determine an applicant family's suitability for tenancy; owners will be responsible for determining suitability.

The owner is responsible for screening and selection of the family to occupy the owner's unit. The PHA 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 PHA to provide prospective owners with the family's current and prior address (as shown in PHA records) and the name and address (if known) of the owner at the family's current and prior addresses.

HUD permits the PHA 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.

TDHCA Policy

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

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

TDHCA Policy

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

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

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

HUD authorizes the PHA to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandated (see Section 3-III.B).

TDHCA Policy

The Department will consider the following factors when making its decision:

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

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

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities;

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

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

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

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

HUD permits PHAs to impose as a condition of admission, a requirement that family members who participated in or were culpable for an action or failure to act which results in the denial of assistance, to not reside in the unit.

TDHCA Policy

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

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

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

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

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

NOTICE OF ELIGIBILITY OR DENIAL

Eligible for Assistance

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

If the Department determines that a family is not eligible for the program for any reason, the family will be notified promptly in writing. The notice will describe (1) the reasons for which assistance has been denied (2) the family's right to an informal review, and (3) the process for obtaining the informal review [24 CFR §982.554 (a)]. If a criminal record is the basis of the denial, a copy of the record must accompany the notice. In addition, a copy of the criminal record must be provided to the subject of the record [24 CFR §982.553(d)].

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

TDHCA Policy

The family will be notified of a decision to deny assistance in writing within 10 business days of the determination. The denial letter will allow the applicant ten (10) calendar days to request an informal review (in writing) with the Department. See Chapter 16, for informal review policies and procedures.

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

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

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

Definitions as used in VAWA:

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

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

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

The term stalking means:

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

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

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

Person with Disabilities [24 CFR §5.403]

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

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

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, because of such

current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

(1) Physical or mental impairment includes:

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

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

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

(4) Is regarded as having an impairment means:

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

(b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment. The Americans with Disabilities Act definition [28 CFR §35.104] for Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) (i) The phrase physical or mental impairment means

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

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

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

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

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

(3) The phrase 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) The phrase is regarded as having an impairment means—

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

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

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.

(5) The term disability does not include—

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

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

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

Chapter 4: APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

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

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

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

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

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

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

Part III: Selection for HCV Assistance. This part describes the policies that guide the PHA 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 PHA has the information needed to make a final eligibility determination.

PART I: THE APPLICATION PROCESS

OVERVIEW

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

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

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

TDHCA Policy

Due to the demand for housing throughout the State of Texas, the Department takes applications on an "open enrollment" basis, depending on the length of the waiting list. Preliminary applications (pre-apps) are taken by the Department in order to compile a waiting list. The Department may elect to skip the pre-

application and use only the full application. When the family comes to the top of the waiting list and the Department is ready to issue a Voucher, the family must have completed the full application. The family will also be required to complete a Personal Declaration Form.

1. Applications will be accepted at the LO/ Department's designated location only during the times and on the days according to information posted throughout the community. Applications are dated in accordance to the date and time the applicant submits the completed application. The LO/ Department will maintain a designated telephone number where interested persons can receive specific directions on how and when to apply.
2. Individuals who have a physical impairment which would prevent them from making an application in person may call the LO/ Department to make special arrangements to complete their application. A Telecommunications Device for the Deaf (TDD) is available for the deaf.
3. Any family requesting an application for Section 8 HCV rental assistance will be given the opportunity to apply as long as the waiting list is open and the LO/ Department is accepting applications.

ACCESSIBILITY OF THE APPLICATION PROCESS

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

The PHA must take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard PHA application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). The PHA 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 PHA must provide an alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of the PHA's policies related to providing reasonable accommodations for people with disabilities.

Limited English Proficiency

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

PLACEMENT ON THE WAITING LIST

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

TDHCA Policy

If the Department or LO 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 Department will send written notification of the ineligibility determination within 10 business days of receiving the complete application from the Department or LO at the Department headquarters. 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

TDHCA Policy

The Department 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 the date and time their preliminary application is received by the Department.

The Department will admit a household not on the waiting list or without consideration for a household's placement on the waiting list if HUD has awarded funding that is targeted for families living in specific units. [24 CFR 982.203]

PART II: MANAGING THE WAITING LIST

OVERVIEW

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

ORGANIZATION OF THE WAITING LIST [24 CFR 982.204 AND 205]

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

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

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

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

TDHCA Policy

The Department currently maintains eight waiting lists that cumulatively cover the Department's entire PHA jurisdiction. Six of the lists are geographically based and are as follows: Ennis, Galveston, Navasota, Waxahachie, AACOG, and the Balance of Jurisdiction. The two remaining lists are for Project Access and the Veterans Administration Supportive Housing (VASH) project list, which are open to receive applications on an ongoing basis. Each list is maintained separately. If additional areas are absorbed by the Department from other voucher administering entities, they will initially be handled as another independent geographic waiting list (e.g., would be a new seventh list) until the list when transferred is depleted, at which time it will merge into the Balance of Jurisdiction. It is the long term goal of the Department that the

geographically based lists be merged as the individual waiting lists are depleted. Until that occurs, issuance of a voucher rotates in order through the six lists. For instance if six vouchers are being made available, each of the six areas would receive one. Waiting list households will be offered a voucher in that rotating order until a wait list is depleted, at which time the geographic area covered by that wait list will be blended into the Balance of Jurisdiction. The Balance of Jurisdiction list may be opened for enrollment periodically during this time to ensure voucher opportunities across the entire jurisdiction, however the other five geographic areas that have their own lists will not be reopened (except possibly as a reasonable accommodation or to serve a VAWA household) . Only upon their depletion and then absorption into the Balance of Jurisdiction would enrollment possibly be reopened, or in the case of a waiting list area with an LO assisting with administration would the Department possibly authorize a reopening of the existing separate waiting list.

When the Department permanently absorbs vouchers from another housing authority and is reassigned the ACC by HUD, the waiting list will be maintained, in its existing order, but will not be further expanded, which is the case with both the Navasota and AACOG lists.

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

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

TDHCA Policy

The Department also operates a Section 811 Program. Applicants who may have extended wait times for the Section 8 Program and are recipients of SSI will be evaluated by the Section 811 staff for possible eligibility for that program.

OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]

Closing the Waiting List

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

TDHCA Policy

If the LO/ or Department is taking applications, they may suspend the taking of applications, with the Department's approval, if the waiting list is such that additional applicants are not expected to be housed within the next 12 month period.

Reopening the Waiting List

If the waiting list has been closed, it cannot be reopened until the PHA 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, where and when applications will be received.

TDHCA Policy

The Department will announce the reopening of any of its waiting lists as least 10 business days prior to the date applications will first be accepted.

The Department will give public notice by publishing the relevant information regarding the availability and nature of housing assistance for eligible families in suitable media outlets including, but not limited to, newspapers of general circulation, minority media, other suitable media outlets, and other local governments or nonprofits that assist low income households in the target area through the Department's listserv.

To reach persons who cannot read the newspapers, the LO representative will distribute fact sheets to community based organizations providing assistance to the target group.

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

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

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

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

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

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

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

TDHCA Policy

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

APPLICATION PERIOD

TDHCA Policy

The application taking and closing date will be determined administratively at the same time that the Department determines to open one or more of its waiting lists. The open enrollment period shall be long enough to allow enough applicants as required by the turnover and the number of Section 8 HCV allocated to apply.

REPORTING CHANGES IN FAMILY CIRCUMSTANCES

TDHCA Policy

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

UPDATING THE WAITING LIST [24 CFR 982.204]

HUD requires the PHA 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 PHA request for information or updates because of the family member's disability, the PHA must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c)(2)].

TDHCA Policy

To insure that the Department's waiting lists reflects the most current applicant information the waiting list will be updated and purged every twelve (12) months.

To update the waiting lists, the Department will send an update request via 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 LO and the last address that the LO/ Department has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response must be in writing and may be delivered in person, by mail, or by fax. Responses should be postmarked or received by the Department no later than 10 business days from the date of the Department letter.

If the family fails to respond within 10 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 10 business days to respond from the date the letter was re-sent.

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

Greater flexibility in these criteria may be provided in the case of Project Access vouchers or to others as a reasonable accommodation.

Removal from the Waiting List

TDHCA Policy

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

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

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

The correspondence will indicate that their name will be removed from the waiting list if they fail to respond within the time frame specified. The applicant may reapply if the waiting list is open. If the waiting list is closed, the applicant will have to wait to reapply. The Department will place a public notice in the local newspaper on where and when families may apply for the program.

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

PART III: SELECTION FOR HCV ASSISTANCE

OVERVIEW

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

The order in which families receive assistance from the waiting list depends on the selection method chosen by the PHA and is impacted in part by any selection preferences that the family qualifies for assistance. The source of HCV funding also may affect the order in which families are selected from the waiting list.

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

SELECTION AND HCV FUNDING SOURCES

Targeted Funding [24 CFR §982.204(e)]

HUD may award a PHA funding for a specified category of families on the waiting list. The PHA must use this funding only to assist the families within the specified category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

TDHCA Policy

If HUD awards the Department program funding that is targeted for families living in specified units:

- a. The Department must use the assistance for the families living in these units;
- b. The Department may admit a family that is not on the Department's waiting list, or without considering the family's waiting list position. The Department must maintain records showing that the family was admitted with HUD-targeted assistance;
- c. For housing covered by the Low-Income Housing Preservation and Resident Home Ownership Act of 1990 (41 USC §4101 et seq.);
- d. A family residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term; and
- e. A non-purchasing family residing in a HOPE 1 or HOPE 2 project.
- f. Any other family required to be housed at the direction of HUD, as directed by a court of law, or part of a TDHCA conciliation agreement.

Regular HCV Funding

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

TDHCA Policy

The Department will use the following types of targeted funding:

Mainstream HCV vouchers

Non-Elderly vouchers

SELECTION METHOD

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

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

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

TDHCA Policy

The Department will first issue specified category until the Department has assisted the required number of special purpose vouchers. Non-specified category vouchers will use the following local preferences for purposes of establishing priority.

The Department will leave the Project Access waiting list open for certain preference groups as needed to meet the preference caps listed below.

Non-Elderly Disabled Program vouchers (targeted funding) waiting list policy:

For the issuance of Non-Elderly Disabled (“NED”) vouchers, only applicants certified eligible for NED Vouchers will be issued a NED voucher. To be an eligible application for a NED voucher, Department will have to receive both a completed application and a completed referral from the Texas Health and Human Services Commission.

Until both are received, the application will not be considered an eligible application. The applicant will only be placed on the waiting list once both documents have been received. Therefore, NED eligible applicants are granted a preference over all other applicants not eligible for NED vouchers. Applicants certified eligible for the NED vouchers will be coded as such on Department’s waiting list. This preference will be Texas Department of Housing and Community Affairs Housing Choice Voucher Program granted only for the issuance of NED vouchers and not any other voucher. If NED vouchers are not available, NED eligible families will maintain their original place on the waiting list for the issuance of non-NED vouchers. All families granted a NED preference will be prioritized based on date and time of being certified eligible and any other applicable preference (elderly, disable, displaced, homeless, residency).

(a.) Identifying NED eligible families currently on the Department’s HCV waiting list

(i) upon receipt of the list of NED families referred by Texas DADS through ARCIL, Department will compare the names with those of families already on Department’s HCV waiting list. Any family currently on the HCV waiting list that matches the referral list, will be coded as NED, and will be granted a NED preference for NED vouchers. For issuance of non-NED vouchers, these applicants will be assisted in order of their original position on Department’s HCV waiting list in

accordance with Department's admissions policies. Therefore they will not lose their original position on the waiting list as a result of receiving a NED preference.

(ii) Department will identify families on Department's HCV waiting list that may be eligible for NED, through a mail-out of an informational letter about the NED program and its eligibility factors, and then refer self-identified families to ARCIL for determination of whether they meet NED eligibility requirements; Department will work with and provide information to local community agencies providing services to families and individuals transitioning out of nursing homes, to determine if they are providing interim housing services to qualifying families who are on the HCV waiting list, and may be NED eligible, but have not yet received a voucher.

(b.) Placing NED eligible families referred by ARCIL on Department's HCV waiting list:

Those eligible applicants on the current waiting list will have priority over families not on the waiting list. If additional funding is available, and all eligible families on the waiting list are exhausted, the waiting list will be reopened for NED eligible families only. Eligibility for the NED vouchers will be based on the respective HUD Notice of Funding Availability and may be limited to referrals from the Texas Department of Aging and Disability Services and their service partners. When Department receives a completed application and referral, the applicant will be placed on the waiting list after all lottery applicants and in order according to the date and time when Department first had received both documents.

If a family coded as NED ceases to meet the criteria for NED eligibility before the Texas Department of Housing and Community Affairs Housing Choice Voucher Program family has moved into an assisted unit, DEPARTMENT will remove the NED coding. If the family was previously on the waiting list, they will maintain their original place on the waiting list. If the family was only on the waiting list due to a NED referral, they will be removed from the waiting list or lose their voucher if already issued.

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 PHA'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 PHA 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)].

TDHCA Policy

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

Order of Selection

The PHA system of preferences may select families either according to the date and time of application, or by a random selection process [24 CFR §982.207(c)]. When selecting families from the waiting list PHAs are required to use targeted funding to assist only those families who meet the specified criteria, and PHAs are 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)].

TDHCA Policy

1. When a HCV is available, the Department will select the family at the top of the waiting list. The order of admission from the waiting list IS NOT based on family size, or on the family unit size for which the family qualifies for under the occupancy guidelines. If the Department does not have sufficient funds

to subsidize the family unit size of the family at the top of the waiting list, the Department WILL NOT skip the top family to admit an applicant with a smaller family unit size. Instead, the family at the top of the waiting list will be admitted when sufficient funds are available.

2. However, the provisions of the Income Targeting/Deconcentration Rule, contained within this policy, shall supersede the selection of applicants based on date and time, and allow the Department to skip families on the waiting list to accomplish this goal.

NOTIFICATION OF SELECTION

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

TDHCA Policy

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

The Department contact information (name, phone number and address) in order to set up the initial interview;

Who is required to attend the interview;

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

Other documents and information that should be brought to the interview.

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

THE APPLICATION INTERVIEW

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

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

TDHCA Policy

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

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

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

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

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission

deadlines for particular items, including documentation of Social Security numbers and eligible non-citizen 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) to the Department, the family will be sent a notice of denial (See Chapter 3) for housing assistance.

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

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

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

COMPLETING THE APPLICATION PROCESS

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

TDHCA Policy

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

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

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 PHA must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing written documentation of information the family needs to know. Once the family is fully informed of the program's requirements, the PHA issues the family a voucher. The voucher includes the unit size the family qualifies for based on the PHA's subsidy standards, as well as the dates of issuance and expiration of the voucher. The voucher is the document that permits the family to begin its search for a unit, and limits the amount of time the family has to successfully locate an acceptable unit.

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

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

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

PART I: BRIEFINGS AND FAMILY OBLIGATIONS

OVERVIEW

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

BRIEFING [24 CFR 982.301]

The PHA 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 PHA 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.

TDHCA Policy

Briefings may be conducted either in groups or in individual meetings.

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

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

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

Notification and Attendance

TDHCA 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 location, date and time of the scheduled briefing.

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

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

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

Oral Briefing [24 CFR 982.301(a)]

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside the PHA's jurisdiction;
- For families eligible under portability, an explanation of portability. The PHA cannot discourage eligible families from moving under portability;
- For families living in high-poverty census tracts, an explanation of the advantages of moving to areas outside of high-poverty concentrations; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

Briefing Packet [24 CFR 982.301(b)]

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

- The term of the voucher, and the PHA's policies on any extensions or suspensions of the term. If the PHA 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 PHA determines the payment standard for a family, how the PHA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how the PHA determines the maximum allowable rent for an assisted unit.
- What the family should consider in deciding whether to lease a unit, including:
 - The condition of the unit,
 - Whether the rent is reasonable,

- The cost of any tenant-paid utilities and whether the unit is energy-efficient, and
- The location of the unit, including proximity to public transportation (if applicable), centers of employment, well rated schools and shopping, proximity to or availability of any needed supportive services, or other indicators of high opportunity areas.
- Where the family may lease a unit. For a family that qualifies to lease a unit outside the PHA 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 PHA policy on providing information about families to prospective owners.
- The PHA 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 PHA.
- The family obligations under the program, including any obligations of a welfare-to-work family.
- The grounds on which the PHA may terminate assistance for a participant family because of family action or failure to act.
- PHA informal hearing procedures including when the PHA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.

If the PHA is located in a metropolitan FMR 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 including 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].

TDHCA Policy

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

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

- The publication *Are You A Victim of Housing Discrimination?* (HUD-903.1) that explains the types of actions a family must avoid and the penalties for program abuse.

FAMILY OBLIGATIONS

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

Time Frames for Reporting Changes Required By Family Obligations

TDHCA Policy

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

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

Family Obligations [24 CFR 982.551]

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

- The family must supply any information that the PHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- 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.

TDHCA Policy

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

If the cost to repair damages beyond normal wear and tear exceeds the security deposit amount paid by the HCV participant, the owner must notify the Department and provide proper documentation of costs.

- Once the Department reviews the documentation and determines that excessive damages have occurred, the Department may decide to not allow the HCV participant to move until damages are paid. The Department may also terminate the HCV participant's assistance, or try to facilitate a repayment agreement between the owner and HCV participant. The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

TDHCA Policy

The Department will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.

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

TDHCA Policy

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

- The family must promptly give the PHA 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 PHA must approve the composition of the assisted family residing in the unit. The family must promptly notify the PHA in writing of the birth, adoption, foster child/adult long-term placement, marriage, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

TDHCA Policy

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

Once an applicant becomes a participant in Department's tenant-based program, the head of household must request permission in writing to add another person to the program prior to them moving into the unit. The Department must also be notified in writing of the birth, adoption or court-awarded custody of a child. The Department will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the PHA in writing if any family member no longer lives in the unit. If the PHA has given approval, a live-in aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residency by a live-in aide, and to define when PHA consent may be given or denied. For policies related to the request and approval/disapproval of live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

TDHCA Policy

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

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

TDHCA Policy

See Chapter 3, Section I.L for Absent Family Members Policy.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).

- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and PHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE

OVERVIEW

The PHA 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 PHA also must establish policies related to the issuance of the voucher, to the voucher term, and to any extensions or suspensions of that term.

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

For each family, the PHA determines the appropriate number of bedrooms under the PHA 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 PHA 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 PHA 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 PHA subsidy standards.

TDHCA Policy

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

Persons of the opposite sex (other than spouses, and children under age 5) will be allocated separate bedrooms.

Live-in aides will be allocated a separate bedroom.

Single person families will be allocated one bedroom.

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

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

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

EXCEPTIONS TO SUBSIDY STANDARDS

In determining family unit size for a particular family, the PHA may grant an exception to its established subsidy standards if the PHA 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)].

TDHCA Policy

Any request for an exception to the subsidy standards must be made to the Department. The request must explain the need or justification for a larger family unit size, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source, unless

the disability and the disability-related request for accommodation is readily apparent or otherwise known. Once the request is received and reviewed for proper documentation by the Department.

The Department will notify the family of its determination within 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.

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 PHA issues a Housing Choice Voucher, form HUD-52646. This chapter deals only with voucher issuance for applicants. For voucher issuance associated with moves of program participants, please refer to Chapter 10.

The voucher is the family's authorization to search for housing. It specifies the unit size for which the family qualifies, and includes both the date of voucher issuance and date of expiration. It contains a brief description of how the program works and explains the family obligations under the program. The voucher is evidence that the PHA has determined the family to be eligible for the program, and that the PHA expects to have money available to subsidize the family if the family finds an approvable unit. However, the PHA 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 PHA's housing choice voucher program [Voucher, form HUD-52646]

A voucher can be issued to an applicant family only after the PHA has determined that the family is eligible for the program based on information received within the 60 days prior to issuance [24 CFR §982.201(e)] and after the family has attended an oral briefing [HCV 8-1].

TDHCA Policy

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

The PHA 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 PHA must wait until it has adequate funds before it calls another family from the list [HCV GB p. 8-10]. If the PHA determines that there is insufficient funding after a voucher has been issued, the PHA may rescind the voucher and place the affected family back on the waiting list.

VOUCHER TERM, EXTENSIONS, AND SUSPENSIONS

Voucher Term [24 CFR §982.303]

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

TDHCA Policy

The initial voucher term will be 60 calendar days.

The family must submit a Request for Tenancy Approval (RTA) and proposed lease within the 60-day period unless the Department grants an extension.

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

The PHA 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 PHA can approve. Discretionary policies related to extension and expiration of search time must be described in the PHA'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 PHA's decision to approve or deny an extension. The PHA'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)].

TDHCA Policy

A family may request an extension of the Voucher time period. All requests for extensions should be received prior to the expiration date of the Voucher. Extensions are permissible at the discretion of the Department primarily for the following reasons:

- Extenuating circumstances such as hospitalization or a family emergency for an extended period of time that has affected the family's ability to find a unit within the initial 60-day time period. The Department will verify the extenuating circumstances prior to the Department granting an extension;
- The family has evidence that they have made a consistent effort to locate a unit and request support services from the Department, throughout the initial 60-day period with regard to their inability to locate a unit;
- The family has turned in a RTA prior to the expiration of the 60-day time period, but the unit has not passed HQS;
- Time Period for Extensions: The Program Manager may grant one or more extensions, not to exceed a total of 60 days. The initial term plus any extensions MAY NOT exceed 120 calendar days for the beginning of the initial term; and/or
- Extensions for Disabled Persons: The Department must grant an extension of up to 150 days for persons who are disabled.

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

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

TDHCA Policy

When the Department receives a RTA and proposed lease, the term of the voucher is suspended/ tolled..

Expiration of Voucher Term

The PHA has the authority to grant extension of search time to specify the length of a extension and to determine the circumstances under which extensions will be granted. The PHA must approve additional search time if needed as a reasonable accommodation to make the program accessible for a person with a disability. The extension must be reasonable for the purpose of the request.

If the PHAs decision to deny the request for an extension, this is not subject to an informal review [24 CFR §982.554(c)(4)].

Such a family does not become ineligible for the program because it was unable to locate a unit before the voucher expired [HCV GB p. 8-13].

TDHCA Policy

If an applicant family's voucher term or extension expires before the Department has approved a RTA, the Department will place the family back on the waiting list with a new application date without requiring the family to reapply for assistance.

Within 10 business days after the expiration of the voucher term or any extension, the Department will notify the family in writing that the voucher term has expired and that the family will be placed back on the waiting list with a new application date.

Chapter 6: INCOME AND SUBSIDY DETERMINATIONS

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

INTRODUCTION

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

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

PART I: ANNUAL INCOME

OVERVIEW

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

5.609 Annual income.

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

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

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

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

- Annual Income Inclusions (Exhibit 6-1)
- Annual Income Exclusions (Exhibit 6-2)

- Treatment of Family Assets (Exhibit 6-3)
- Earned Income Disallowance for Persons with Disabilities (Exhibit 6-4)

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

HOUSEHOLD COMPOSITION AND INCOME

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

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 Co-head Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR §5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or Co-head)	Employment income above \$480/year is excluded [24 CFR §5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.

* Chapter 3 provides more detail

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

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

TDHCA Policy

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

*Under no circumstances can the entire family be absent from the unit for more than 90 calendar days. (§982.312)

Absent Students

TDHCA 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 Department indicating that the student has established a separate household or the family declares that the student has established a separate household.

* Full time students who attend school away from the home will be treated in the following manner:

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

Absences Due to Placement in Foster Care

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

TDHCA Policy

If a child has been placed in foster care, the Department will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member. 'Permanently removed' is defined as more than 365 days.

Absent Head, Spouse, or Co-head

TDHCA Policy

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

Family Members Permanently Confined for Medical Reasons

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

TDHCA Policy

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

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 Co-head qualify as an elderly person or a person with disabilities.

Absent Due to Incarceration

TDHCA Policy

If the sole member is incarcerated for more than 45 consecutive days, s/he will be considered permanently absent. Any member of the household, other than the sole member, will be considered permanently absent if s/he is incarcerated for 45 consecutive days.

The Department will determine if the reason for incarceration is for drug-related or violent criminal activity and, if so, will terminate assistance to the family (see Chapter 12: Denial and Termination of Assistance.)

Joint Custody of Dependents

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

Caretakers for a Child

TDHCA Policy

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

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

ANTICIPATING ANNUAL INCOME

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

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

TDHCA Policy

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

Known Changes in Income

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

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

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

Seasonal Changes in Income

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

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

Enter detailed notes in HAPPY Housing_pro under the "New Note" screen.

Example1 : A family reports that as a school bus driver the individual is employed 9 months thru out the year. Their salary monthly is \$1,300 per month. The Department would calculate annual income as follows: $(\$1,300 \times 9 \text{ monthly}) = \$11,700$.

Using Enterprise Income Verification (EIV) to Project Income

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

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

TDHCA Policy

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

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

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

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

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

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

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

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

The Department will use the most current verified income data and, if appropriate, historical income data to calculate anticipated annual income.

Use of Historical Income Data

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

ZERO INCOME INTERIMS

There is no minimum income requirement.

TDHCA Policy

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

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

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

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

When it is discovered that an outside source has provided money to the family, or has paid the bills on the family's behalf, the PHA will send third party verification to the providing party to determine whether the income is sporadic or recurring in order to determine whether the amount is to be included in the family's annual income.

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

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

EARNED INCOME

Types of Earned Income Included in Annual Income

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

TDHCA Policy

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

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

Types of Earned Income Not Counted in Annual Income

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

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

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

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

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

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

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

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

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

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

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

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

TDHCA Policy

The Department defines training program as "a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period of time. It is designed to lead to a higher level of proficiency, and it enhances the individual's ability to obtain employment. It may have

performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education" [expired Notice PIH 98-2, p. 3].

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

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

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

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

TDHCA 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.

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

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 straight period of time. The Department will administer the requirement in accordance with 24 CFR §5.617 and which can be viewed in full in PIH Notice 2016-05, Attachment E.

Eligibility

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

- Employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment. Previously unemployed includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.
- Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR §5.603(b)].

- New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (“TANF”) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

Calculation of the Disallowance

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

TDHCA Policy

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

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

Initial 12-Month Exclusion.

During the initial 12-month exclusion period, the full amount (100 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.

TDHCA 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 consecutive 24 month maximum. The eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

TDHCA Policy

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

BUSINESS INCOME [24 CFR §5.609(b)(2)]

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

Business Expenses

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

TDHCA Policy

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

Business Expansion

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

TDHCA 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 PHA to deduct from gross income the amortization of capital indebtedness.

TDHCA 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 Department will allow as a business expense interest, but not principal, paid on capital indebtedness.

Negative Business Income

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

Withdrawal of Cash or Assets from a Business

HUD regulations require the PHA 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.

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

Co-owned Businesses

TDHCA 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.

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 PHA include in annual income the “interest, dividends, and other net income of any kind from real or personal property” [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the PHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

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

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

Income from Assets

The PHA 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 PHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) the PHA 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 PHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

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

Valuing Assets

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

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

Lump-Sum Receipts

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

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

When family assets are equal to or less than \$5,000, the PHA will not request supporting documentation (e.g. bank statements) from the family to confirm the assets or the amount of income expected to be received from those assets. The PHA will accept the families personal declaration as a self-certification at the time of the annual renewal. If the family has assets in excess of \$5000, the PHA must obtain supporting documentation (e.g. bank statements) from the family to confirm the assets. Any assets will continue to be reported on HUD Form 50058.

Determining Actual Anticipated Income from Assets

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

Withdrawal of Cash or Liquidation of Investments

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

Jointly Owned Assets

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

TDHCA Policy

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

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

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

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

Minimum Threshold

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

TDHCA Policy

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

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

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

Separation or Divorce

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

TDHCA 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

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

Types of Assets

Checking and Savings Accounts

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

TDHCA Policy

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

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

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

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

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

TDHCA Policy

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

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

Equity in Real Property or Other Capital Investments

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

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

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

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

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

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

Trusts

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

Revocable Trusts

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

Non-revocable Trusts

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

Retirement Accounts

Company Retirement/Pension Accounts

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

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

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

IRA, Keogh, and Similar Retirement Savings Accounts

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

Personal Property

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

TDHCA Policy

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

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

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

TDHCA Policy

Necessary personal property consists of items such as clothing, furniture, household furnishings, jewelry that is not held as an investment, and vehicles, including those specially equipped for persons with disabilities.

Life Insurance

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

PERIODIC PAYMENTS

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

Periodic Payments Included in Annual Income

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

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

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

TDHCA Policy

When a delayed-start payment is received, the family must report the change within 10 business days to the Department LO representative. The Department will then assess the family situation and determines whether to adjust the family share and Department subsidy. If the determination requires the family to make retroactive payments for the period the payment was intended to cover, the family may (1) pay in full any amount due or (2) request to enter into a repayment agreement with the Department.

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

See Chapter 16 for policies related to repayment agreements.

Periodic Payments Excluded from Annual Income

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR §5.609(c)(2)]

TDHCA Policy

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

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

PAYMENTS IN LIEU OF EARNINGS

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

WELFARE ASSISTANCE

Overview

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

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

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

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

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

Offsets

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

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

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

Alimony and Child Support

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

TDHCA Policy

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

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

Regular Contributions or Gifts

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

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

ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

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

- Reimbursement of medical expenses [24 CFR §5.609(c)(4)]
- The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR §5.609(c)(6)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR §5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR §5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR §5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR §5.609(c)(12)]

- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR §5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR §5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR §5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:
 - a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. §2017 (b))
 - b. Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. §§5044(g), 5058)
 - c. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. §1626(c))
 - d. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. §459e)
 - e. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. §8624(f))
 - f. Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. §1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. §2931).)
 - g. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
 - h. The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. §§1407-1408)
 - i. Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. §1087uu)
 - j. Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. §3056(f))
 - k. Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *Re Agent-product liability litigation*, M.D.L. No. 381 (E.D.N.Y.)
 - l. Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. §1721)
 - m. The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. §9858q)
 - n. Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. §32(j))
 - o. Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
 - p. Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. §12637(d))
 - q. Any allowance paid under the provisions of 38 U.S.C. §1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. §1805)

- r. Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. §10602)
- s. Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. §2931)

PART II: ADJUSTED INCOME

INTRODUCTION

Overview

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

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

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds 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 childcare expenses necessary to enable a member of the family to be employed or to further his or her education.

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

Anticipating Expenses

TDHCA Policy

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

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

DEPENDENT DEDUCTION

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

ELDERLY OR DISABLED FAMILY DEDUCTION

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

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

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

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

Definition of Medical Expenses 24 CFR §5.603(b)

HUD regulations define medical expenses to include medical insurance premiums that are anticipated during the period for which annual income is computed, and that are not covered by insurance."

TDHCA Policy

Those necessary medical expenses, including medical insurance premiums that are anticipated during the period for which annual income is computed, and that are not covered by insurance. Medical expenses, in excess of three percent (3%) of annual income, are deductible from income by elderly and disabled households only.

Families That Qualify for Both Medical and Disability Assistance Expenses

TDHCA Policy

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

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

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

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed 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 [24 CFR §5.603(b)].

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

The disability expense deduction is capped by the amount of "earned income received by family members who are 18 years of age or older and who are able to work" because of the expense [24 CFR §5.611(a)(3)(ii)]. The earned

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

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

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

Eligible Disability Expenses

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

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

Eligible Auxiliary Apparatus

TDHCA 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.

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

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

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

Necessary and Reasonable Expenses

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

TDHCA Policy

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

Families That Qualify for Both Medical and Disability Assistance Expenses

TDHCA 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 Department will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

CHILD CARE EXPENSE DEDUCTION

HUD defines child care expenses at 24 CFR §5.603(b) as "amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for 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, childcare expenses for foster children that are living in the assisted family's household are included when determining the family's childcare expenses [HCV GB, p. 5-29].

Determining Who Is Enabled to Pursue an Eligible Activity

TDHCA 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 childcare deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family's request, the Department will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

TDHCA Policy

If the childcare expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the childcare expense being allowed by the Department.

Furthering Education

TDHCA 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 childcare claimed.

Being Gainfully Employed

TDHCA Policy

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

Earned Income Limit on Child Care Expense Deduction

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

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

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

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

TDHCA Policy

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

Eligible Childcare Expenses

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

Allowable Child Care Activities

TDHCA Policy

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

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

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

Necessary and Reasonable Costs

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

TDHCA Policy

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

To establish the reasonableness of childcare costs, the Department will use the schedule of childcare costs from the local welfare agency. Families may present, and the Department will consider, justification for costs that exceed typical costs in the area.

PART III: CALCULATING FAMILY SHARE AND PHA SUBSIDY

OVERVIEW OF RENT AND SUBSIDY CALCULATIONS

TTP Formula [24 CFR §5.628]

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

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

The PHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

Welfare Rent [24 CFR §.628]

TDHCA Policy

Welfare rent does not apply.

Minimum Rent [24 CFR§ 5.630]

TDHCA Policy

The minimum rent for all Department localities is \$25.00

Family Share [24 CFR §982.305(a)(5)]

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

PHA Subsidy [24 CFR §982.505(b)]

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

Utility Reimbursement Payment [24 CFR §§960.253, 982.514(b)]

When the PHA subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. HUD permits the PHA to pay the reimbursement to the family or directly to the utility provider. PHAs may make reimbursement payments monthly, retroactively or prospectively. A PHA that adopts any of these provisions, and chooses to make reimbursement payments retroactively, must permit a family to request a hardship exemption, in accordance with 24 CFR 5.630(b)(2). If a family receives a hardship exemption, then the PHA may either reimburse the family on a monthly basis or it may make prospective payments to the family, on a quarterly basis.

TDHCA Policy

The Department elects to make utility reimbursements to the family on a monthly basis .

FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR §5.630]

Overview

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

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the PHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

HUD-Defined Financial Hardship

Financial hardship includes the following situations:

1. The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

TDHCA 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.

TDHCA 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.

TDHCA Policy

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

5. The family has experienced other circumstances determined by the PHA.

TDHCA Policy

The Department has not established any additional hardship criteria but will consider specific hardship situations on a case by case basis.

Implementation of Hardship Exemption

Determination of Hardship

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

The PHA then determines whether the financial hardship exists and whether the hardship is temporary (expected to last 90 days or less) or long-term.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

Example: Impact of Minimum Rent Exemption Assume the PHA 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	

TDHCA Policy

To qualify for a hardship exemption, a family must submit a request for a hardship exemption form to the Department prior to the rent becoming delinquent and before the lease is terminated by the Department.

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

No Financial Hardship

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

TDHCA Policy

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

Temporary Hardship

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

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

TDHCA Policy

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

If a resident requests a hardship exemption (prior to the rent being delinquent) under this section, and the Department reasonably determines the hardship to be of a temporary nature, exemption shall not be granted during a ninety day period beginning upon the making of the request for the exemption.

A resident may not be evicted during the ninety-day period for non-payment of rent. In such a case, if the

resident thereafter demonstrates that the financial hardship is of a long-term basis, the Department shall retroactively exempt the resident from the applicability of the minimum rent requirement for such ninety-day period. This paragraph does not prohibit the HA from taking eviction action for other violations of the lease.)

Long-Term Hardship

If the PHA determines that the financial hardship is long-term, the PHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

TDHCA 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.

APPLYING PAYMENT STANDARDS [24 CFR §982.505]

Overview

The PHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the PHA's payment standards. The establishment and revision of the PHA'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 PHA'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 PHA 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 PHA must use the appropriate payment standard for the exception area.

The PHA 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 PHA 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 PHA 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 PHA 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 PHA 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 PHA 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 PHA at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. The PHA will advise the family that the application of the lower payment standard will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard.

Step 3: At the second regular reexamination following the decrease in the payment standard, the lower payment standard will be used to calculate the monthly housing assistance payment for the family unless the PHA 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 PHA is allowed to establish a higher payment standard for the family within the basic range.

APPLYING UTILITY ALLOWANCES [24 CFR §982.517]

Overview

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. The PHA 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 PHA subsidy standards. See Chapter 5 for information on the PHA's subsidy standards.

Effective July 01, 2014, PHAs must limit the utility allowance payment for tenant-based vouchers to the family unit size for which the voucher is issued, irrespective of the size of the unit rented by the family, with an exemption for families with a person with disabilities.

Therefore, the utility allowance for a family is the lower of the utility allowance amount for the family unit size or the utility allowance amount for the size of the unit rented by the family.

At the request of a family with a person with disabilities, the PHA must approve a utility allowance higher than the applicable amount if such a higher utility allowance is needed as a reasonable accommodation.

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

Reasonable Accommodation

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA'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 PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed.

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

Utility Allowance Revisions

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

TDHCA Policy

The Department must review its utility allowance schedule annually, and must revise its allowances at other times when there has been a change of 10 percent or more in the utility rates or fuel costs since the last revision of the schedule.

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

The PHA may implement revised UA schedules on a specified date and time for all households provided the household has been given at least sixty days notice of the change.

PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR §5.520]

HUD regulations prohibit assistance to ineligible family members. A mixed family is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The PHA must prorate the assistance provided to a mixed family. The PHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if the PHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, the PHA subsidy would be reduced to \$250.

EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

24 CFR 5.609

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

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

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

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

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

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

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

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

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

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

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

(6) Welfare assistance payments.

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

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31¹; and

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

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

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

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

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular

¹ Text of 45 CFR 260.31 follows.

contributions or gifts received from organizations or from persons not residing in the dwelling;

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

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

HHS	DEFINITION	OF
"ASSISTANCE"		

45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

260.31 What does the term "assistance" mean?

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

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

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

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

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

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

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

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

(iii) Will not extend beyond four months.

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

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

(4) Refundable earned income tax credits;

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

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

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

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

24 CFR 5.609

(c) Annual income does not include the following:

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;
(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program;
(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
- (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) [Reserved]
- (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
- (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

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

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

Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits
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The following updated list of federally mandated exclusions supersedes the notice published in the Federal Register on December 14, 2012. The following list of program benefits is the comprehensive list of benefits that currently qualify for the income exclusion in either any Federal program or in specific Federal programs (exclusions (viii), (xiii), (xxi), and (xxii) have provisions that apply only to specific HUD programs):

- (i) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));
- (ii) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(f)(1), 5058);
- (iii) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
- (iv) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
- (v) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
- (vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, section 6);
- (vii) The first \$2000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;
- (viii) Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109-115, section 327) (as amended);
- (ix) Payments received from programs funded under title V of the Older Americans Act of 1965 (42 U.S.C. 3056g);
- (x) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (Pub. L. 101-201) or any other fund established pursuant to the settlement in *In Re Agent Orange Liability Litigation*, M.D.L. No. 381 (E.D.N.Y.);
- (xi) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 25 U.S.C. 1728);
- (xii) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- (xiii) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of

1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(l));

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

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

(xvi) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821).

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

(xviii) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

(xix) Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1760(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

(xx) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(xxi) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. § 1437a(b)(4));

(xxii) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.) and administered by the Office of Native American Programs;

(xxiii) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(xxiv) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(xxv) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013- 30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and

(xxvi) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)).

EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

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

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

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

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

Chapter 7: VERIFICATION

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

INTRODUCTION

The PHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain the family's consent to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The PHA must not pass on the cost of verification to the family.

The PHA will follow the verification guidance provided by HUD in PIH Notice 2004-01 Verification Guidance and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA policies.

Part I describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV).

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of the PHA.

PART I: GENERAL VERIFICATION REQUIREMENTS

FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516 and 982.551, 24 CFR 5.230]

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

Consent Forms

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

Penalties for Failing to Consent [24 CFR 5.232]

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

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy

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

- Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Up-front Income Verification (UIV) using a non-HUD system.
- Written Third-party Verification Form (may be provided by applicant or participant)
- Oral Third-party Verification
- Self-Certification

Each of the verification methods is discussed in subsequent sections below. Exhibit 7-1 at the end of the chapter contains an excerpt from the notice that provides guidance with respect to how each method may be used.

Requirements for Acceptable Documents

TDHCA Policy

Photocopies are an acceptable means of verification as long as they appear to be authentic and there is not sign of tampering with the information. If the Department has any reason to believe the documents are not authentic, the Department will request all original documents. Any documents used for verification generally must be dated within 60 calendar days of the date they are provided to the Department. The documents must not be damaged, altered or in any way illegible.

Print-outs from web pages are considered original documents.

A family self-certifications must be made in a format acceptable to the Department.

File Documentation

The PHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, will be verified as the policies set forth in the plan. The families record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

TDHCA Policy

PHA will document verification attempts, information obtained, and decisions reached during the verification process. This information will be documented on a telephone verification form.

UP-FRONT INCOME VERIFICATION (UIV) EIV SYSTEM

Up-front Income Verification refers to the PHAs 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 PHA.

The PHA must restrict access to and safeguard EIV data in accordance with HUD guidance on security procedures, as issued and made available by HUD.

There may be legitimate differences between the information provided by the family and UIV-generated information. No adverse action can be taken against a family until the PHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process of the PHA.

Upfront Income Verification using HUD's Enterprise Income Verification (EIV) System (Mandatory)

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participants families. HUD requires the PHA to use EIV system in its entirety. The following policies apply to the use of HUD's EIV system.

EIV Income Reports

The data shown on income reports is updated quarterly. Data may be between 3 and 6 months old at the time reports are generated.

TDHCA Policy

PHA will obtain income reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process. Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used also to meet regulatory requirements for third party verification, as described above.

EIV Discrepancy Reports

The EIV discrepancy report is a tool for identifying who may have concealed or under reported income. Data in the discrepancy report represents income for past reporting periods and may be between 6 months and 30 months at the time reports are generated.

Families who have not concealed or under-reported income may appear on the discrepancy report in some circumstances, such as loss of a job or addition of new family members. This income may be identified through use of the EIV "Income Discrepancy Report" or by review of the discrepancy tab for the individual family.

TDHCA Policy

The PHA will generate the Income Discrepancy Report at least once every 3 months. When the PHA determines that a particular family appearing on the Income Discrepancy Report has not disclosed or has under-reported income, the family will be mailed a Failure to Report Income letter. To avoid a possible repayment agreement, a subsequent interim or reexamination must be completed. The PHA will review the EIV discrepancy during processing of annual and interim reexamination. When it appears that a family may have under-reported income, the PHA will request written third-party verification of the income in question.

EIV Identify Verification

The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on social security number, name, and date of birth.

PHAs are required to use EIV's identity Verification Report on a monthly basis to improve the availability of income information will be displayed [Notice PIH 2010-3].

TDHCA Policy

The PHA will identify participants whose identity verification has failed by reviewing the EIV Identity Verification Report monthly. The PHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When the PHA determines the discrepancy exists due to PHA errors such as spelling, or incorrect birth dates, the error will be corrected promptly.

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 PHA by the family. If written third-party verification is not available, the PHA must attempt to obtain a "written third-party verification form. This is a standard form used to Collect information from a third party.

Written Third-Party Verification [Notice PIH 2010-19]

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source

TDHCA Policy

Acceptable tenant-provided documents include, but are not limited to: paycheck stubs, company letter head from employer, SSA benefits verification, bank statements, child-support award letters, welfare benefit letters, unemployment and monetary notices. Verification of earned income must be within 60 days of the request. The PHA may reject documentation provided by the family if the document is a copy, appears to be forged, or if the document is altered, mutilated, or illegible. If the PHA determines the third-party document provided by the family are not acceptable, the PHA will explain the reason to the family and request additional documentation.

Written Third-Party Verification Form

When upfront verification is not available and the family is unable to provide written third-party documents, the PHA 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.

A written third-party verification form is mandatory when there is an unreported source of income or a substantial difference in reported income of \$3,000 annual or more and there is no UIV or tenant-provided documentation to support the income discrepancy.

TDHCA Policy

The PHA will send third-party verification forms directly to the third-party by mail, fax, or email. Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by the PHA. HUD requires the PHA to make at least two attempts to obtain third-party verification before using another form of verification [VG, p. 15].

Oral Third-Party Verification [Notice PIH 2010-19]

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when a request for written third-party verification forms have not been returned within a reasonable time. e.g., 10 business days.

TDHCA Policy

In collecting third-party oral verification, PHA will record in the family's file the name, title of the person contacted, date, time of the conversation, for each attempt, phone number used, email with read-receipt confirmation, and the facts provided.

The department will initiate a third-party oral verification if verification is not received on the 11th business day.

The Department will make a minimum of two attempts, one of which may be oral, to obtain third-party verification. A record of each attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file .

When any source responds verbally to the initial written request for verification the Department will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

When Third-Party Information is Late

When third-party verification has been requested and the timeframes for submission have been exceeded, the PHA will use the information from documents on a provisional basis. If the PHA later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, the PHA will conduct an interim reexamination to adjust the figures used for the reexamination, regardless of the PHA's interim reexamination policy.

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 verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

TDHCA Policy

If the family cannot provide original documents, and it is not cost effective for the PHA to receive, the PHA will accept a self-certification as the only means of verification. The cost will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost. [VG, p.18].

Primary Documents

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

Imputed Assets and Expenses

The PHA will accept a self-certification from a family if assets disposed of for less than fair market value [HCV GB, p. 5-28].

The PHA will determine that third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification [VG, p. 15].

TDHCA Policy

The Department will use a self-certification in lieu of requesting third-party verification when the market value of an individual asset or an expense is less than \$5000 annually and the family has original documents that support the declared amount.

Certain Income, Asset and Expense Sources

The PHA will determine that third-party verification is not available when it is known that an income source does not have the ability to provide written or oral third-party verification [VG, p. 15]. For example, the PHA will rely upon review of documents when the PHA determines that a third party's privacy rules prohibit the source from disclosing information. Another example would be where the Social Security Administration (SSA) has refused to respond to requests for third-party verification.

TDHCA Policy

The Department also will determine that third-party verification is necessary when there is a service charge for verifying an asset or expense and the family has original documents that provide the pertinent information.

If the family cannot provide original documents, the Department will accept a self-certification from the tenant as the only means of verification. The cost of verification will not be passed on to the family.

REVIEW OF DOCUMENTS

Using Review of Documents as Verification

If the PHA has determined that third-party verification is not available or not required, the PHA will use documents provided by the family as verification.

The PHA may also review documents when necessary to help clarify information provided by third parties. In such cases, the PHA will document in the file how the PHA arrived at a conclusion about the income or expense to include in its calculations.

TDHCA Policy

The tenant file will include documentation of records reviewed by the Department's Regional Coordinator (RC) which support the family's statements.

If possible, original copies (not photocopies) of supporting documents should be reviewed, though the Department RC should photocopy the document (unless prohibited by law) and place it in the tenant's file. The Department RC reviewing the document(s) should prepare a summary of the information, sign and date.

The summary should include the rationale for using document review as verification and again, if possible, follow up with the third party to obtain written verification later.

Self-Certification

Self-certification, or "tenant declaration", is used as a last resort when the PHA is unable to obtain third-party verification.

TDHCA Policy

The Department may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the Department and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a Department representative or notary public.

Part II: Verifying FAMILY INFORMATION

VERIFICATION OF LEGAL IDENTITY

TDHCA Policy

The PHA will require families to furnish verification of legal identity for each household.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers	Certificate of birth
Church issued baptismal certificate	Adoption papers
Current, valid driver's license or Department of Motor Vehicles identification card	Custody agreement (through the courts)
U.S. military discharge (DD 214)	Health and Human Services ID (foster children; adopted children)
U.S. passport	School Records
Employer identification card	Delegation of Parental Authority
	I-94 School records

The Department will require families to furnish verification of legal identity for each household member. A birth certificate is the preferred document for verification of legal identity. If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required. Legal identity will be verified on an as needed basis.

SOCIAL SECURITY NUMBERS [24 CFR 5.216 and Notice PIH 2010-3]

The family must provide documentation of a valid social security number (SSN) for each family member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include, existing program participants as of January 31, 2010, who have either previously disclosed social security number that HUD has determined to be valid or are 62 years of age and received covered housing assistance before January 31, 2010.

If a family member reports an SSN but cannot provide acceptable documentation of the number, the PHA will require a self-certification stating that documentation of the SSN cannot be provided at this time. The PHA will give the family member 90 calendar days from the date of the family member's self-certification.

If the family is an applicant, assistance cannot be provided until proper documentation of the SSN is provided.

TDHCA Policy

The PHA will instruct the family to obtain a duplicate card from the local Social Security Administration (SSA) office or verification of social security number from the SSA. For individuals who are at least 62 years of age and are unable to submit the required documentation of their SSN within the initial 90-day period, the PHA will grant an additional 60 calendar days to provide documentation. If any family member obtains an SSN after admission to the program, the new SSN must be disclosed within 30 days. The social security numbers of household members, such as live-in aids, must be verified For the purpose of conducting criminal background checks.

Documentation of Age

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

TDHCA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, the Department will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age need only be verified only once during continuously assisted occupancy.

FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

TDHCA Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Verification of guardianship is a court-ordered assignment, school records, verification from social services agency/ Supplemental Nutrition Assistance Program (SNAP) showing family members. Self-certification of temporary guardianship or appointment from parent.

Marriage

TDHCA Policy

Certification by the head of household is normally sufficient verification. If the Department has reasonable doubts about a marital relationship, the Department will require the family to document the marriage.

A marriage certificate may be required to verify the validity of the marriage if the Department believes or receives information indicating that an individual's declaration may not be accurate.

If a marriage certificate is not available, the following information is acceptable:

- Driver's license that displays the same address and last names;
- Federal tax forms that indicate that the family filed taxes as a married couple during the last tax-reporting period;
- Other acceptable forms of documentation of marriage would include any document that has been issued by a federal state, city or county government and indicates that the individuals are living as a married couple. Couples that are considered married under common law can provide the same information as listed above to document that they are living together as a married couple. In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

Separation or Divorce

TDHCA Policy

Certification by the head of household is normally sufficient verification. If the Department has reasonable doubts about a separation or divorce, the Department may require at least one of the verifications listed below:

- A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.
- A copy of a court-ordered maintenance or other court record is required to document a separation.
- If no court document is available, documentation from a community-based agency will be accepted.
- A notarized statement from current landlord (not family) verifying that the current landlord knows that the applicant and spouse have not lived together for the last six (6) months or more;
- Income tax statements from both husband and wife indicating both filed income taxes separately the last year and that they filed from different addresses;
- Written statement from lawyer that applicant has filed suit for divorce because of physical abuse;
- Written statement from an abuse shelter, law enforcement agencies, and/or social services agencies that applicant needs housing due to physical abuse; or
- Food stamp verification, if no other documentation is available.
- If no court document is available, documentation from a community-based agency will be accepted.

Absence of Adult Member

TDHCA 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.

Husband or wife institutes divorce action

Husband or wife institutes legal separation

Order of protection/ restraining order obtained by one family member against another

Documentation of another address at which the person resides (e.g., a lease/ utility bill)

Certification of the spouse no longer living in the unit or contributing to the family

Foster Children and Foster Adults

TDHCA Policy

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

VERIFICATION OF STUDENT STATUS

TDHCA Policy

The Department requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or co-head
- The family reports a childcare deduction to enable a family member to further his or her education
- The family includes a student enrolled in an institution of higher education
- The family claims income exclusion because the student is receiving earned income and only the first \$480 is included as income.

Restrictions on Assistance to Students Enrolled in Institutions of Higher Education

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving H CV assistance.

TDHCA Policy

In accordance with the verification hierarchy described in Section 6-1.B, the PHA 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.

If the PHA cannot verify at least one of these exemption criteria, PHA will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, PHA will then proceed to verify either the student's parents' income eligibility or the student's independence from his/her parents (see below).

Independent Student

TDHCA Policy

PHA will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

Either reviewing or verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of independent student (see Section 3-II.E).

Reviewing prior year income tax returns to verify whether a parent has claimed the student as a dependent.

Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is \$0.

DOCUMENTATION OF DISABILITY

The PHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. See Chapter 2, Part II, for the policies that relate to persons with disabilities.

Family Members Receiving SSA Disability Benefits

The PHA will attempt to obtain information about disability benefits through the HUD EIV System when it is available, or HUD's Tenant Assessment Subsystem (TASS). If the HUD EIV System or TASS is not available, the PHA will attempt to obtain third-party written/oral verification from the SSA. If third-party verification is not available, the family may provide an original SSA document that confirms the current benefits.

Verification of receipt of SSA benefits or SSI based upon disability is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions.

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

Family Members Not Receiving SSA Disability Benefits

For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability in 24 CFR 5.403.

TDHCA 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.

CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]

Overview

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons.

A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and PHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy [24 CFR 5.508(g) (5)]

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The PHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

TDHCA Policy

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

Eligible Immigrants: Documents Required and PHA Verification [HCV GB, pp. 5-3 and 5-7]

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals. The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-2 at the end of this chapter summarizes documents family members must provide.

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. Of this plan. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the PHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The PHA will follow all USCIS protocols for verification of eligible immigration status.

VERIFICATION OF PREFERENCE STATUS

The PHA must verify any preferences claimed by an applicant.

TDHCA Policy

The Department offers Project Access preferences for some vouchers as reflected in the Texas Administrative Code. Certain project-based VASH vouchers have preferences for the elderly or disabled as reflected in the project's HAP contract. Disaster recovery impacted households are eligible for a preference for all other vouchers. Verification occurs prior to issuance of vouchers.

PART III: Verifying Income AND ASSETS

Chapter 6, Part I of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides PHA policies that supplement the general verification procedures specified in Part I of this chapter.

EARNED INCOME

Tips

TDHCA 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 provide a signed estimate of tips received for the prior year and tips anticipated to be received in the coming year. Tips will also be verified via the employer identification form sent directly from the Department to the employer.

Business and Self-Employment Income

TDHCA 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 PHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination, the PHA may request documents that support submitted financial statements such as manifests, appointment books, cashbooks, or bank statements.

If a family member has been self-employed less than three (3) months, the PHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the PHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

Social Security/SSI Benefits

TDHCA Policy

To verify the SS/SSI benefits of applicants, the Department will obtain information about social security/SSI benefits through the HUD EIV System or the Tenant Assessment Subsystem (TASS). If benefit information is not available in HUD systems, the Department will attempt to use third party verification to obtain current SSA benefits. Verification must be within 60 days.

If third party verification is not available the Department will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the Department will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov. Once the participant has received the benefit verification letter they will be required to provide it to the Department.

SPOUSAL SUPPORT OR CHILD SUPPORT

TDHCA Policy

The way the Department will seek verification for spousal support and child support differs depending on whether the family declares that it receives regular payments. The Department requests for the family to certify whether they are receiving or not receiving child support at the time of family admission or renewal.

If the family declares that it receives regular payments, verification will be sought in the following order.

- If payments are made through a state or local entity, the Department will request a record of payments through the Office of the Attorney General.
- Third-party verification from the person paying the support

- Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules
- Copy of the latest check and/or payment stubs
- Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

If the family declares that it receives irregular or no payments, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

- A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts
- If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

Note: Families are not required to undertake independent enforcement action.

ASSETS AND INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The PHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

TDHCA Policy

The Department will verify the value of assets disposed of only if:

- The Department does not already have a reasonable estimation of its value from previously collected information, or
- The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and the PHA verified this amount. Now the person reports that she has given this \$10,000 to her son. The PHA has a reasonable estimate of the value of the asset; therefore, recertification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the PHA will verify the value of this asset.

NET INCOME FROM RENTAL PROPERTY

TDHCA 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 Department will require the family members involved in the rental of property to provide a self-certification of income and expenses for the

previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

RETIREMENT ACCOUNTS

TDHCA Policy

When third-party verification is not available, the type of original document that will be accepted depends upon the family member's retirement status.

- Before retirement, the Department will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.
- Upon retirement, the Department will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.
- After retirement, the Department will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I.

The PHA must obtain verification for income exclusions only if, without verification, the PHA would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, the PHA will confirm that PHA records verify the child's age but will not send a verification request to the restaurant. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

TDHCA Policy

The Department will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance). In all other cases, the Department will report the amount to be excluded as indicated on documents provided by the family.

7-III.I. ZERO ANNUAL INCOME STATUS

Families claiming to have no annual income will be required to execute verification forms to determine that certain forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by the household.

TDHCA Policy

If the family has reported zero income, the Department will have the family sign a verification form to verify that no income is being provided. In addition, the Department will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income. Families whose TTP is at or below the minimum rent will be required to complete a family expense summary. Also, the PHA will verify UIV sources.

Families will be required to report any changes in their income status within thirty (30) calendar days of the occurrence of employment and/or if any other type of income is received.

PART IV: VERIFYING MANDATORY DEDUCTIONS

DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that the PHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

Dependent Deduction

See Chapter 6 (6-II.B.) for a full discussion of this deduction. The PHA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

Elderly/Disabled Family Deduction

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. The PHA will verify that the head, spouse, or Co-head is 62 years of age or older or a person with disabilities.

MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

TDHCA Policy

The Department will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

Third-party verification form signed by the provider, when possible

If third party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case, the Department will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The Department will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

If third party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months

In addition, the PHA 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.
- Costs incurred in past years are counted only once.

Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. The PHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for the PHA'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.

TDHCA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

Expenses Incurred in Past Years

TDHCA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, the Department will verify:

- The anticipated repayment schedule
- The amounts paid in the past, and
- Whether the amounts to be repaid have been deducted from the family's annual income in past years

DISABILITY ASSISTANCE EXPENSES

Policies related to disability assistance expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Attendant Care Expense

TDHCA Policy

The Department will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

- Third-party verification form signed by the provider, when possible
- If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months

Amount of Auxiliary Apparatus Expense

TDHCA Policy

Expenses for auxiliary apparatus will be verified through:

- Third-party verification of anticipated purchase costs of auxiliary apparatus
- If third party is not possible, billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months
- If third party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months

In addition, the PHA 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 PHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

Family Member(s) Permitted to Work

The PHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

TDHCA Policy

The Department will seek third-party verification from a Rehabilitation Agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).

If third party and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

Unreimbursed Expenses

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

TDHCA Policy

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

CHILD CARE EXPENSES

Policies related to 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 PHA must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of childcare.
- The costs are reasonable if seeking employment or furthering education.

Eligible Child

To be eligible for the childcare deduction, the costs must be incurred for the care of a child under the age of 13. The PHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

Unreimbursed Expense

To be eligible for the childcare deduction, the costs must not be reimbursed by another source.

TDHCA Policy

The childcare provider will be asked to certify that, to the best of the provider's knowledge, the childcare expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that the childcare expenses are not paid by or reimbursed to the family from any source.

Pursuing an Eligible Activity

The PHA 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.

TDHCA Policy

Information to be Gathered: The Department will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work: Whenever possible the Department will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases, the Department will request verification from the agency of the member's job seeking efforts to date and require the family to submit to the Department any reports provided to the other agency.

In the event third-party verification is not available, the Department will provide the family with a form on which the family member must record job search efforts. The Department will review the information at each subsequent reexamination for which this deduction is claimed.

Furthering Education: The Department will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the childcare is enrolled and provide information about the timing of classes for which the person is registered.

Gainful Employment: The Department will seek verification from the employer of the work schedule of the person who is permitted to work by the childcare. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

Allowable Type of Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

TDHCA Policy

The Department will verify that the type of childcare selected by the family is allowable, as described in Chapter 6 (6-II.F).

The Department will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorated costs if some of the care is provided for ineligible family members).

The Department will verify that the childcare provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

Reasonableness of Expenses

Only reasonable childcare costs can be deducted.

TDHCA Policy

The actual costs the family incurs will be compared with the Department's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable. To establish the reasonableness of childcare costs, the Department will use the schedule of childcare costs from the local welfare agency.

If the family presents a justification for costs that exceed typical costs in the area, the Department will request additional documentation, as required, to support a determination that the higher cost is appropriate.

EXHIBIT 7-1: HUD VERIFICATION GUIDANCE NOTICE (PIH 2004-01, pp. 11-14)

U.S. Department of Housing and Urban Development Office of Public and Indian Housing

The New HUD Regulation: 24 CFR 5.233. Effective January 31, 2010, all PHAs are required to use the EIV system in its entirety. This means that PHAs must use all features of the EIV system to:

- a. Verify tenant employment and income information during mandatory reexaminations of family composition and income in accordance with 24 CFR §5.236, and HUD administrative guidance; and
- b. Reduce administrative and subsidy payment errors in accordance with HUD administrative guidance.

All PHAs are required to review the EIV Income Report of each family before or during mandatory annual and interim reexaminations of family income and/or composition to reduce tenant under reporting of income and improper subsidy payments. EIV is classified as an UIV technique (or automated written third party verification), which helps to identify income sources and/or amounts that the tenant may not have disclosed. This UIV technique in many instances will reduce the need to mail or fax third party verification request forms to an income source. EIV also provides various reports to assist PHAs with the following:

- a. Identifying tenants whose reported personal identifiers do not match the SSA database;
- b. Identifying tenants who need to disclose a SSN;
- c. Identifying tenants whose alternate identification number (Alt ID) needs to be replaced with a SSN;
- d. Identifying tenants who may not have reported complete and accurate income information;
- e. Identifying tenants who have started a new job;
- f. Identifying tenants who may be receiving duplicate rental assistance;
- g. Identifying tenants who are deceased and possibly continuing to receive rental assistance;
- h. Identifying former tenants of PIH rental assistance programs who voluntarily or involuntarily left the program and have a reportable adverse status and/or owe money to a PHA or Section 8 landlord.

Verification Hierarchy:

PHAs are required to access the EIV system and obtain an Income Report for each household. The PHA is required to maintain the Income Report in the tenant file along with the form HUD-50058 and other supporting documentation to support income and rent determinations for all mandatory annual reexaminations of family income and composition.

If the Income Report does not contain any employment and income information for the family, the PHA should attempt the next lower level verification technique, as noted in the below chart.

Level Verification Technique Ranking:

6 Upfront Income Verification(UIV)

EXHIBIT 7-1: HUD VERIFICATION GUIDANCE NOTICE (PIH 2004-01, pp. 11-14)
cont.

Using HUD's Enterprise Income Verification (EIV) system (not available for income verifications of applicants) Highest (Mandatory)

5 Upfront Income Verification (UIV)

Using non-HUD system Highest (Optional)

4 Written third Party Verification High

(Mandatory to supplement EIV-reported income sources and when EIV has no data; Mandatory for non-EIV reported income sources; Mandatory when tenant disputes EIV reported employment and income information and is unable to provide acceptable documentation to support dispute)

3 Written Third Party Verification Form

Medium-Low(Mandatory if written third party verification documents are not available or rejected by the PHA; and when the applicant or tenant is unable to provide acceptable documentation)

2 Oral Third Party Verification Low

(Mandatory if written third party verification is not available) Must document file narrative when this verification system is used.

1 Tenant Declaration Low

(Use as a last resort when unable to obtain any type of third party verification)

Note: This verification hierarchy applies to income determinations for applicants and participants. However, EIV is not available for verifying income of applicants.

Verification Technique Definitions Third Party Verification Techniques Upfront Income Verification (UIV) (Level 6/5): The verification of income before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a number of individuals. It should be noted that the EIV system is available to all PHAs as a UIV technique. PHAs are encouraged to continue using other non-HUD UIV tools, such as The Work Number (an automated verification system) and state government databases, to validate tenant-reported income.

Written Third Party Verification (Level 4): An original or authentic document generated by a third party source dated either within the 60-day period preceding the reexamination or PHA request date. Such documentation may be in the possession of the tenant (or applicant), and is commonly referred to as tenant-provided documents. It is the Department's position that such tenant-provided documents are written third party verification since these documents originated from a third party source. The PHA may, at its discretion, reject any tenant-provided documents and follow up directly with the source to obtain necessary verification of information.

Examples of acceptable tenant-provided documentation (generated by a third party source) include, but are not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit verification letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Current acceptable tenant-provided documents must be used for income and rent determinations.

The PHA is required to obtain between two - four current and consecutive pay stubs for determining annual income from wages. For new income sources or when two pay-stubs are not available, the PHA

EXHIBIT 7-1: HUD VERIFICATION GUIDANCE NOTICE (PIH 2004-01, pp. 11-14) cont.

should project income based on the information from a traditional written third party verification form or the best available information.

Note: Documents older than 60 days (from the PHA interview/determination or request date) is acceptable for confirming effective dates of income.

Written Third Party Verification Form (Level 3): Also, known as traditional third party verification. A standardized form to collect information from a third party source. The third party completes the form by hand (in writing or typeset). PHAs send the form directly to the third party source by mail, fax, or email.

It is the Department's position that the administrative burden and risk associated with use of the traditional third party verification form may be reduced by PHAs relying on acceptable documents that are generated by a third party, but in the possession of and provided by the tenant (or applicant). Many documents in the possession of the tenant are derived from third party sources (i.e. employers, federal, state and/or local agencies, banks, etc.).

The Department recognizes that third party verification request forms sent to third party sources often are not returned. In other instances, the person who completes the verification form may provide incomplete information; or some tenants may collude with the third party source to provide false information; or the tenant intercepts the form and provides false information.

The Department requires PHAs to rely on documents that originate from a third party source's computerized system and/or database, as this process reduces the likelihood of incorrect or falsified information being provided on the third party verification request form. The use of acceptable tenant-provided documents, which originate from a third party source, will improve the integrity of information used to determine a family's income and rent and ultimately reduce improper subsidy payments. This verification process will also streamline the income verification process.

Oral Third Party Verification (Level 2): Independent verification of information by contacting the individual income/expense source(s), as identified through the UIV technique or identified by the family, via telephone or in-person visit. PHA staff should document in the tenant file, the date and time of the telephone call (or visit to the third party), the name of the person contacted and telephone number, along with the confirmed information. This verification method is commonly used in the event that the independent source does not respond to the PHA's faxed, mailed, or e- mailed request for information in a reasonable time-frame, i.e., ten (10) business days.

Non-Third Party Verification Technique Tenant Declaration (Level 1): The tenant submits an affidavit or notarized statement of reported income and/or expenses to the PHA. This verification method should be used as a last resort when the PHA has not been successful in obtaining information via all other verification techniques. When the PHA relies on tenant declaration, the PHA must document in the tenant file why third party verification was not available.

Exceptions to Third Party Verification Requirements

HUD is aware that in some situations, third party verification is not available for a variety of reasons. Oftentimes, the PHA may have made numerous attempts to obtain the required verifications with no success, or it may not be cost effective to obtain third party verification of income, assets, or expenses, when the impact on total tenant payment is minimal. In these cases, the PHA is required to document in the family file the reason(s) why third party verification was not available.

EXHIBIT 7-1: HUD VERIFICATION GUIDANCE NOTICE (PIH 2004-01, pp. 11-14) cont.

The exception to third party verification can be found at 24 CFR §960.259(c)(1) and §982.516(a)(2), which states, "The PHA must obtain and document in the family file third party verification of the following factors, or must document in the file why third party verification was not available."

Third party verification requirements. In accordance with 24 CFR §960.259(c) (1) and 24 CFR §982.516(a) (2) for the Public Housing and the HCV programs, respectively, the PHA must obtain and document in the tenant file third party verification of the following factors, or must document in the tenant file why third party verification was not available: (i) reported family annual income; (ii) the value of assets; (iii) expenses related to deductions from annual income; and (iv) other factors that affect the determination of adjusted income.

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

- All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

Elderly Noncitizens

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

All other Noncitizens

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

<ul style="list-style-type: none"> • Form I-551 Alien Registration Receipt Card (for permanent resident aliens) • Form I-94 Arrival-Departure Record annotated with one of the following: <ul style="list-style-type: none"> • "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" 	<ul style="list-style-type: none"> • Form I-94 Arrival-Departure Record with no annotation accompanied by: <ul style="list-style-type: none"> • A final court decision granting asylum (but only if no appeal is taken); • A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90); • A court decision granting withholding of deportation; or • A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).
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<ul style="list-style-type: none"> • Form I-688 Temporary Resident Card annotated "Section 245A" or Section 210". 	<ul style="list-style-type: none"> • Form I-688B Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274a.12".
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- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant's entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the Federal Register

Chapter 8: HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subparts I and 24 CFR 982.507]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the PHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and PHA-established requirements.

All units must pass an HQS inspection prior to the approval of a lease and at least once every 24 months during the term of the contract, and at other times as needed to determine that the unit meets HQS. Effective 07/01/2014, PHAs may establish a policy for performing unit inspections biennially rather than annually. PHAs will still have the option to inspect every unit annually.

HUD requires PHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

HQS are the HUD minimum quality standards for tenant-based programs. HQS standards are required both at initial occupancy and during the term of the lease. HQS standards apply to the building and premises, as well as the unit. Newly leased units must pass the HQS inspection before the beginning date of the assisted lease and HAP contract.

This chapter explains HUD and PHA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections the PHA 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 PHA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

PART I: PHYSICAL STANDARDS

GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

Tenant Preference Items

HUD requires the PHA to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, the PHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Attachment 8-2 summarizes those items that are considered tenant preferences.

Modifications to Provide Accessibility

Under the Fair Housing Act of 1988, an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

TDHCA Policy

The Department has not established a policy for negotiations of a restoration agreement. Any owner requesting restoration or a restoration agreement will have the request evaluated on a case by case basis.

ADDITIONAL PHA REQUIREMENTS

The PHA may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if the PHA additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

Thermal Environment [HCV GB p.10-7]

The PHA 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.

TDHCA 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

TDHCA Policy

As permitted by HUD, the Department has adopted the following specific requirements that elaborate on HUD standards.

Walls

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

Windows

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens are optional. If present, must be in good condition.

*Screens are optional on patio doors.

Doors

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold. A keyed dead bolt locking device and door viewer will be required on any exterior door of the dwelling.

All interior doors must have no holes, have all trim intact, and be operable without the use of a key.

Floors

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be re-secured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of base shoe, trim, or sealing. Vinyl base shoe is permitted. Base is a narrow molding often of quarter round joining the bottom of a baseboard and the floor.

Sinks

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

All sinks must have functioning stoppers.

Security

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

Additional PHA Requirements:

All appliances provided by the owner must be kept in safe and working condition.

All plumbing fixtures must be free from drips and leaks.

All holes in walls are to be patched with the exception of minor nail holes.

Doorstops are required on all doors subject to damaging walls when opened.

If cabinets are designed to have drawers and doors, all must be operational.

All closets and doors designed with knobs should have all knobs present and in working condition.

All sliding patio doors must have proper rollers so that they are in easy working condition.

All severely chipped or rusted sinks and bathtubs must be patched, repaired, or replaced.

All holes in the yard area, which could be a tripping hazard, must be corrected.

The presence and location of smoke detectors in all HCV units must be in compliance with HUD's regulations.

There shall be no missing circuit breakers or openings in the circuit panel. The circuit panel (breaker box) shall be a dead front with no openings.

Units must be clearly identified with house or apartment numbers.

Light fixtures that require a cover/ globe must be installed, unless it is designed not to have support.

Manufactured home must be securely anchored by a Tie-down device.

Carpet and flooring must be clean and in sanitary condition.

LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]

HUD requires the PHA to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life-threatening conditions within 24 hours of PHA notification.

A re-inspection will be conducted to verify the items have been repaired. Life threatening conditions are defined as:

“Any condition that renders a dwelling unit unfit for human habitation and/or places the occupants of said dwelling unit in an immediate, dangerous, and/or health/safety situation including deficient heating and/or cooling of the unit.”

TDHCA 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, 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 in the unit, which result in non-compliance with HUD regulations (one on each level of each habitable area) regarding the number and location of smoke detectors.

If an owner fails to correct life-threatening conditions as required by the Department, the housing assistance payment will be abated and the HAP contract will be terminated. See 8-II-G.

If a family fails to correct a family-caused life threatening condition as required by the Department, the Department may terminate the family's assistance. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless the PHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

An illegal unit is a unit which is not authorized by, or does not have required permits from, local authorities. Illegal units are not acceptable unit choices unless restored to code and recognized as habitable by the local code authority.

OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- Failure to maintain the unit and premises in decent and sanitary conditions that could result in potential health and/ or safety concerns
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items that could not be charged against the tenant's security deposit under state law or court practice

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]

If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the PHA 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 PHA, 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 PHA will take action in accordance with Section 8-II.G.

PHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]

If the PHA 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 PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

TDHCA Policy

A unit meets HQS space standard if the dwelling unit has at least one bedroom or living/sleeping room for each two persons. A kitchen or bathroom cannot be considered a living/sleeping room . (24 CFR 982.401(f) (2)). See also Chapter 5, Part II.

PART II: THE INSPECTION PROCESS

OVERVIEW [24 CFR 982.405]

Types of Inspections

The PHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- **Initial Inspections.** The PHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- **Annual/ Biennial Inspections.** HUD requires the PHA to inspect each unit under lease at least annually or biennially, depending on PHA policy, to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- **Special Inspections.** A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- **Quality Control Inspections.** HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that all inspectors are enforcing HQS correctly and uniformly.

Inspection of Local Operator/Representative-owned Units

TDHCA Policy

When a LO owns property in which a Department HCV tenant resides or will reside, a qualified inspector not affiliated with the LO/ Department must perform the required HQS inspection. An LO unit is defined as a unit that is owned by the Local Operator (or a separate agency that also employs the LO) that administers the HCV assistance to a family. If the Department utilizes a non-affiliated inspector to conduct the HQS inspection, they must communicate the results of each inspection to the family and the Department.

Inspection Costs

TDHCA Policy

In the case of inspections of LO owned units, the Department may use administrative fees to compensate the non-affiliated inspector for inspections performed. Neither the Department nor the non-affiliated inspector may charge the family or the owner of the unit any fee for the inspection [24 CFR.982.352 (b)].

Notice and Scheduling

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

TDHCA 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 not less than 48 hours. In the case of a life-threatening emergency, the Department will give as much notice as possible, given the nature of the emergency.

Inspections may be scheduled between 7:30 a.m. and 6:30 p.m. Generally, inspections will be conducted on business days only. For Initial Inspections, the LO representative is required to complete the inspection within 15 days after receiving the Request for Tenancy Approval (RTA) from the applicant.

Attendance at inspections by owner and family.

HUD permits the PHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

TDHCA Policy

When a family occupies the unit at the time of inspection, an adult family member 18 or older, or family representative must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the Department will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

INITIAL HQS INSPECTION [24 CFR 982.401(a)]

Timing of Initial Inspections

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA).

TDHCA Policy

The Department will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the RTA. If the unit fails the initial Housing Quality Standards inspection, the family and owner will be advised to notify the PHA once repairs are completed. Self-Certifications are not permitted for an initial inspection.

The Department may accept as satisfactory an inspection of the unit performed for a different housing program, which may include but is not limited to inspections for properties funded with housing tax credits.

Inspection Results and Re-inspections

TDHCA Policy

If any HQS violations are identified, the owner will be notified in writing of the deficiencies and be given 10 calendar days to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the Department for good cause. The Department or the LO representative will re-inspect the unit within 7 business days of the date the owner notifies the Department that the required corrections have been made.

If the time period for correcting the deficiencies (or any Department-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the Department will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The Department may agree to conduct a second re-inspection, for good cause, at the written request of the family and owner.

Following a failed re-inspection, the family may submit a new RTA for the unit if the family has not found another unit by the time the owner completes all repairs and the family continues to wish to live in the unit.

Utilities

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

TDHCA Policy

The Department will not conduct the initial inspection until all utilities are connected and operational. The HAP contract will not be executed until the utilities are connected and all other HQS requirements are fulfilled.

Appliances

TDHCA Policy

If the family is responsible for supplying the stove and/or refrigerator, the Department will require the stove and refrigerator to be placed in the unit prior to the HQS inspection.

ANNUAL/ BIENNIAL HQS INSPECTIONS [24 CFR 982.405(a)]

Scheduling the Inspection

Each unit under HAP contract must be inspected within 24 months of the last full HQS inspection. The PHA reserves the right to require additional inspections of any owner or any tenant at time.

TDHCA Policy

If an adult family member 18 or older, or family representative cannot be present on the scheduled date, the family should request that the LO/ Department reschedule the inspection. The LO/ Department and family will agree on a new inspection date that generally should take place within 5 business days of the originally scheduled date. The LO/ Department 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 LO/ Department will automatically schedule a second inspection. If the family misses two scheduled inspections without the LO/ Department's approval, the Department will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12. Inspections within the biennium will represent a cross-section of areas within the jurisdiction and of inspectors.

SPECIAL INSPECTIONS [HCV GB p. 10-30]

The PHA will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit. If the reported condition is not life-threatening (i.e., the Department would require the owner to make the repairs within no more than 30 calendar days), then the Department must inspect the unit within 15 days of when the PHA received the complaint.

TDHCA Policy

During a special inspection, the Department generally will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual/ biennial inspection has been scheduled or is due within 30 days of the date the special inspection is scheduled the Department may elect to conduct a full inspection.

QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b), HCV GB p. 10-32]

HUD requires a PHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

MOVE-OUT INSPECTIONS

TDHCA Policy

These inspections are performed after the tenant moves out of the unit at the owner's request. The owner and/or the owner's representative will be required to attend the move-out inspection. If the tenant plans to remain in the unit and the HAP contract is going to be canceled, the inspection can be performed with the tenant in place. Move-out inspections substantiate possible damage claim/violation of family obligations. If an owner requests a move-out inspection to substantiate a damage claim/violation of family obligation, the inspection must be completed prior to the work being done that will correct the damage. The owner must request an inspection within 5 business days of the move-out. If the LO cannot schedule the inspection prior to re-rental of the unit, the LO may give the owner permission to submit a damage claim/violation of family obligation with pictures of the unit, to substantiate the damage. The Department may use this evidence to terminate the continuing assistance to the participant because of a family violation.

INSPECTION RESULTS AND RE-INSPECTIONS FOR UNITS UNDER HAP CONTRACT

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, the PHA will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible.

TDHCA Policy

When life-threatening conditions are identified, the Department or LO will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the Department's notice.

When failures that are not life threatening are identified, the Department will send the owner and the family a written notification of the inspection results within 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 Department-approved extension), the owner's HAP will be abated in accordance with Department policy (see 8-II.G).

Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any Department-approved extension, if applicable) the family's assistance will be terminated in accordance with Department policy (see Chapter 12).

Extensions [24 CFR 982.404].

For conditions that are life-threatening, the PHA cannot grant an extension to the 24-hour corrective action period. For conditions that are not life-threatening, the PHA may grant an exception to the required time frames for correcting the violation, if the PHA determines that an extension is appropriate.

TDHCA Policy

Extensions will be granted in cases where the Department has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

- A repair cannot be completed because required parts or services are not available.
- A repair cannot be completed because of weather conditions.

- A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case-by-case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided. The request must be submitted prior to the expiration date of the initial correction date.

Re-inspections

TDHCA Policy

Re-inspections may be performed by LO/ Department staff for verifying that deficiencies noted in the previous inspection has been corrected and meet HQS standards by the end of the corrective period or any Department approved extension.

The family and owner will be given reasonable notice of the re-inspection appointment. If the deficiencies have not been corrected by the time of the re-inspection, the Department will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with Department policies. If the LO/ Department is unable to gain entry to the unit in order to conduct the scheduled re-inspection, the Department will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

The PHA is required to conduct a follow-up inspection if the unit does not pass HQS pursuant to the Initial Inspection. The follow-up is to determine whether all deficiencies during the initial inspection were corrected within the timeframe. Annual or special re-inspections may be verified by LO/ Department staff or remotely by providing the following conditions:

- Self-Certification/ Tenant confirmation
- Photos of the HQS deficiency
- Receipt(s) for work complete has been corrected. The regulation at 982.404(a) (3) states that the PHA "verifies" HQS repairs.

The PHA may accept an owner's certification that required repairs were completed and then verify that action at the next on-site inspection. Further, a PHA might tie the verification process to the severity of corrections needed and/or its experience with the owner and property.

ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA 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 PHA, HUD requires the PHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.2(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

TDHCA Policy

The Department will make all HAP abatements effective the first of the month following the expiration of the Department specified correction period (including any extension).

The Department will inspect abated units within 7 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period, the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

HAP Contract Termination

The PHA must decide how long any abatement period will continue before the HAP contract will be terminated. The PHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. The PHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

TDHCA Policy

The maximum length of time that HAP may be abated is 60 days. However, if the owner completes corrections and notifies the Department before the termination date of the HAP contract, the Department may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the Department is 30 days.

ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the PHA (and any extensions), the PHA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

PART III: RENT REASONABLENESS [24 CFR 982.507]

OVERVIEW

No HAP contract can be approved until the PHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

Local Operator/Representative-owned Units

When a LO owns property in which a Department HCV tenant resides or will reside, a qualified inspector not affiliated with the LO must determine rent reasonableness in accordance with program requirements, and assist the family in negotiating the contract rent when the family requests assistance. If the Department utilizes a non-affiliated inspector to conduct the rent reasonableness, they must communicate the results of their determination to the family and the Department. An LO owned unit is defined as a unit that is owned by the Local Operator (or a separate agency that also employs the LO that administers the HCV assistance to a family).

WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-initiated Rent Determinations

The PHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The PHA (or independent agency in the case of PHA-owned units) will assist the family with the negotiations upon request. At initial occupancy, the PHA 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.

TDHCA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. The request must be received 60 days prior to the tenant's renewal date. For rent increase requests after initial lease-up, the Department 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 Department will consider unit size and length of tenancy in the other units.

The Department will determine whether the requested increase is reasonable after a rent reasonable study has been completed by the LO and forwarded to Department headquarters for approval. In most cases the owner will be notified of the determination within 30 days.

Example of the impact of this policy:

An owner is asking \$500 for a unit and 3 other units of the same size that have turned over this year are renting for \$500 but 4 units that have been occupied by the same tenants for many years have rents ranging from \$450 to \$480. It would be reasonable for the Department to assume that the market for units becoming available now is \$500.

PHA- and HUD-Initiated Rent Reasonableness Determinations

HUD requires the PHA 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 PHA to make a determination at any other time. The PHA may decide that a new determination of rent reasonableness is needed at any time.

TDHCA Policy

In addition to the instances described above, the Department will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the Department determines that the initial rent reasonableness determination was in error or (2) the Department determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

The market areas for rent reasonableness are census tracts and/or neighborhoods within 30 miles of the target unit to the extent possible and depending on the availability of comparable units. Subject units within a defined housing market area will be compared to similar units within the same area.

HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. The PHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age (within 30 miles of the target unit to the extent possible.)
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made.
- Amenities, services, and utilities included in the rent

Units that Must Not be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

Note: Notice PIH 2011-46 issued August 17, 2011, provides further guidance on the issue of what constitutes an assisted unit.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the PHA 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 PHA information regarding rents charged for other units on the premises. Information is gathered on unassisted rental units in the PHA's market area, and each unit is rated, using the PHA's rent reasonableness system. Using an automated method, the average rents are identified for units of like size and type within the same market area.

Attempts will be made to localize the unit within the same census tract or the adjoining census tract. As many defined factors of the items listed above on the unit to be assisted will be compared, to those factors of comparable unassisted units in the database. The average will be adjusted up or down based on the estimated dollar value of the comparable items in comparison with the total database. The unit and the comparables shall be maintained in the file.

PHA RENT REASONABLENESS METHODOLOGY

How Market Data is Collected

TDHCA Policy

The LO/ Department will collect and maintain data on market rents in the Department's jurisdiction on an annual basis. The information will be gathered utilizing the Data Collection Form for Unassisted Rental Units provided by the Department. To gather information about unassisted units

the LO/ Department will utilize sources that include newspapers, tax appraisal districts, rental publications from supermarkets, realtors, management agents, market surveys, inquiries of owners and other available sources. The data will be maintained in the Department's office for reference. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

How Rents are Determined

TDHCA 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 LO/ Department will compare at least two comparable units in the private unassisted market to the contract property utilizing the data collection form. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the Department may make adjustments to the range of prices to account for these differences.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference – not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rents units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly.

For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $\$500 \times 11 \text{ months} = 5500 / 12 \text{ months} = \text{actual monthly rent of } \488 .

The Department will notify the owner of the rent the Department can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The Department will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within 5 business days of the Department's request for information or the owner's request to submit information

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HOS. For more detailed information, see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HOS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Sanitary Facilities

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

Food Preparation and Refuse Disposal

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

Space and Security

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

Thermal Environment

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

Illumination and Electricity

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

Structure and Materials

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

Interior Air Quality

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one open able window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS cont.

Water Supply

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

Lead-Based Paint

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the PHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- 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 PHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

Smoke Detectors

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If any person with a hearing impairment occupies the dwelling unit, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Hazards and Health/Safety

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information, see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- **Sanitary Facilities.** The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
 - **Food Preparation and Refuse Disposal.** The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
 - **Space and Security.** The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
 - **Energy conservation items.** The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
 - **Illumination and Electricity.** The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- (6) **Structure and Materials.** Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- (7) **Indoor Air.** Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- (8) **Sanitary Conditions.** The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- (9) **Neighborhood conditions.** Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

Chapter 9: GENERAL LEASING POLICIES

INTRODUCTION [24 CFR 982.305(a)]

This Section covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract. The PHA's program operations are designed to utilize available resources in a manner that is efficient and provides eligible families timely assistance based on the number of units that have

been budgeted. The PHA's objectives include maximizing HUD funds by providing assistance to as many eligible families and for as many eligible units as the budget will allow.

After families are issued a voucher, they may search for a unit anywhere within the jurisdiction of PHA, or outside of PHA's jurisdiction if they qualify for portability. The family must find an eligible unit under the program rules, with an owner/landlord who is willing to enter into a Housing Assistance Payments Contract with PHA. This Chapter defines the types of eligible housing, PHA's policies that pertain to initial inspections, lease requirements, owner disapproval, and the processing of Requests for Approval of Tenancy (RFTA).

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for PHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, PHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the PHA 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 PHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

TENANT SCREENING

The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The PHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the PHA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a) (2)].

The PHA must provide the owner with the family's current and prior address (as shown in the PHA records); and the name and address (if known to the PHA) of the landlord at the family's current and prior address. [24 CFR 982.307 (b) (1)].

The PHA is permitted, but not required, to offer the owner other information in the PHA's possession about the family's tenancy [24 CFR 982.307(b)(2)].

The PHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b) (3)].

TDHCA Policy

The Department will not screen applicants for family behavior or suitability for tenancy.

The Department will not provide additional screening information to the owner.

REQUESTING TENANCY APPROVAL [Form HUD-52517]

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the PHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the PHA:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- The proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A
- W9 Form, required
- Direct Deposit Form, required
- Recorded Deed, if applicable
- Management Agreement, if applicable

The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the PHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

TDHCA Policy

The RTA must be signed by both the family and the owner. The owner may submit the RTA on behalf of the family. A completed RTA (including the proposed dwelling lease) may be submitted in-person, by mail, fax, or by email (pdf).

The family may not submit more than one (1) RTA at a time. Once, the family submits the RTA the Department will review the RTA for completeness. If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RTA, the Department will notify the family and the owner of the deficiencies.

Missing information and/or missing documents may be accepted in-person, by mail, fax, or email (pdf). The Department will not accept missing information over the phone.

When the family submits the RTA and proposed lease, the Department will also review the terms of the RTA for consistency with the terms of the proposed lease.

If the terms of the RTA are not consistent with the terms of the proposed lease, the Department will notify the family and the owner of the discrepancies.

Corrections to the terms of the RTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. The Department will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the Department will attempt to communicate with the owner and family by phone, fax, or email. The Department will use mail when the parties cannot be reached by phone, fax, or email.

OWNER PARTICIPATION

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

ELIGIBLE UNITS

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the PHA's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]

The PHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

PHA-Owned Units [24 CFR 982.352(b)]

Otherwise eligible units that are owned or substantially controlled by the PHA issuing the voucher may also be leased in the voucher program. In order for a PHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a PHA-owned unit without any pressure or steering by the PHA.

TDHCA Policy

The Department does not have any PHA-owned units available for leasing under the voucher program.

Special Housing Types [24 CFR 982 Subpart M]

HUD regulations permit, but do not generally require, the PHA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that the PHA has chosen to allow.

The regulations do require the PHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

Duplicative Assistance [24 CFR 982.352(c)]

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

Unit Size

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

Rent Burden [24 CFR 982.508]

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the dwelling unit rent must be at a level where the family's share of rent does not exceed 40 percent of the family's monthly-adjusted income. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

LEASE AND TENANCY ADDENDUM

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; the PHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

Lease Form and Tenancy Addendum [24 CFR 982.308]

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added word-for-word to the owner's standard lease form, for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by the PHA. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

TDHCA Policy

The Department does not provide a model or standard dwelling lease for owners to use in the HCV program.

Lease Information [24 CFR 982.308(d)]

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner, tenant and all family members;
- The unit rented (address, apartment number, and any other information needed to identify the contract unit);
- The term of the lease (initial term and any provisions for renewal);
- The amount of the monthly rent to owner, and;
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family.

Term of Assisted Tenancy [24 CFR 982.309]

The initial term of the assisted dwelling lease must be for at least one year. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the PHA to approve a shorter initial lease term if certain conditions are met.

TDHCA Policy

The Department will not approve an initial lease term of less than one (1) year except as a reasonable accommodation or as part of a VAWA transfer. During the initial term of the lease, the owner may not raise the rent to the tenant [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist. The PHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

Security Deposit [24 CFR 982.313 (a) and (b)]

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the PHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

TDHCA Policy

The Department will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

Separate Non-Lease Agreements between Owner and Tenant

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus the PHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

TDHCA Policy

The Department permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family.

These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

PHA Review of Lease

The PHA will review the dwelling lease for compliance with all applicable federal requirements.

TDHCA Policy

If the dwelling lease is incomplete or incorrect, the Department will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. The Department will not accept missing and corrected information over the phone.

Because the initial leasing process is time-sensitive, the Department will attempt to communicate with the owner and family by phone, fax, or email. The Department will use mail when the parties can't be reached by phone, fax, or email.

The PHA is permitted, but is not required, to review the lease to determine if the lease complies with state and local law and is permitted to decline to approve the tenancy if the PHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

TDHCA Policy

The Department will not review the owner's lease for compliance with state/local law.

TENANCY APPROVAL [24 CFR 982.305]

After receiving the family's Request for Tenancy Approval (RTA), with proposed dwelling lease, the PHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the PHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the PHA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the PHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

TDHCA Policy

When a family finds a unit, and the owner is willing to lease the unit under the program, the family may request the Department to approve the lease and unit.

Property owners cannot participate in the program if they are disapproved by the Department).

If the Department determines that a unit which an eligible family wishes to lease meets HQS and the proposed lease is approved, the Department representative shall notify the owner and the family of its determination of lease approval.

After receiving notification from the Department, the owner and the Department shall schedule a meeting and execute and sign the contract. After the contract is executed, the owner and family shall execute and sign the lease and provide a copy to the Department.

The Department shall retain the following in its files:

- The RTA form;
- The approved lease;
- Inspection report;
- The Department certification of the current rent being charged for comparable units in the private unassisted market, taking into account the location, size, type, quality, amenities, facilities and management and maintenance service of such unit. This certification will be maintained for three years to comply with HUD regulations and HUD inspection; and
- Executed contract.

If the Department determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The Department will instruct the owner and family of the steps that are necessary to approve the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), the Department will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

SUSPENSION OF SEARCH TIME

TDHCA Policy

Upon receipt of the Request for Lease approval form from the family, the Department will stop the clock on ("Suspend") the voucher term. The suspension time will equal the number of days it takes the Department to approve or deny the request for lease approval. The suspension of time is also called "tolling".

Toll Time	
Voucher Issued: May 1 Expiration Date: June 29	Family Submits RTA: May 15 PHA Denies Unit: May 24
Tolling Time: 9 Days (May 16-24) New Voucher Expiration Date: July 8 (June 29 + 9 days)	

HAP CONTRACT EXECUTION [24 CFR 982.305]

The HAP contract is a written agreement between the PHA and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements.

HUD prescribes the HAP contract format.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The PHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The PHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The PHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the PHA will pay housing assistance payments after execution of the HAP contract (in accordance

with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60 day period is void, and the PHA may not pay any housing assistance payment to the owner.

TDHCA Policy

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the Department. The Department will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the Department will execute the HAP contract. The Department will not execute the HAP contract until the owner has submitted IRS form W-9. The Department will ensure that the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

CHANGES IN LEASE OR RENT [24 CFR 982.308]

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
- Changes in lease provisions governing the term of the lease, and;
- The family moves to a new unit, even if the unit is in the same building or complex.

In these cases, if the HCV assistance is to continue, the family must submit a new RTA along with a new dwelling lease containing the altered terms. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of rent, the owner must notify the PHA of any changes in the amount of the rent to owner at least 60 days prior to the anniversary date of the HAP contract and the change must be approved by the PHA before any such changes go into effect [24 CFR 982.308(g)(4)]. The PHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or give the family notice in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

TDHCA Policy

The PHA and tenant must receive owner notification of any request to increase the amount of rent at least (60) days before the changes go into effect. Any rent increase made after the initial term of the lease (12 months), will require a Rent Reasonableness review. Once the rent increase has been approved, a renewal lease will be required with both signatures. Each year, a renewal lease will be required. Contract rents may be adjusted by the Department on an annual basis or special adjustments as provided below:

Annual Adjustment – Upon request from the owner to the LO/ Department, and tenant, an annual adjustment may be made if the contract unit is in decent, safe and sanitary condition, the owner is in

compliance with the terms of the lease and HAP contract. Additional reasons for a rental increase are as followed:

- Property taxes increased
- Insurance cost increased
- Maintenance items and or improvements were made

Special Adjustment – Subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the owner clearly demonstrates that such general increases have caused increases in the owner's operating costs which are not adequately compensated for by the annual adjustment provided for in (1) above in this section. The owner shall submit financial statements to the LO representative which clearly support the increase.

Contract rents will not be adjusted by the Department on an annual basis for the following reasons:

Increase in the volume of Section 8 HCV paperwork

Protection against damages likely to be caused by Section 8 or lower income families

In cases where the Department disapproves an owner's request for a contract rent increase, the Department will notify the owner and the family in writing and will state the reason for not approving the increase. Should an owner insist on the increase requested, the Department will notify the family and the owner that assistance will be terminated. The family will be offered a new voucher to relocate.

Chapter 10: MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

INTRODUCTION

Freedom of choice is a hallmark of the housing choice voucher (HCV) program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and PHA policies governing moves within or outside 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

ALLOWABLE MOVES

HUD regulations list five conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give 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)].
- The Violence Against Women Reauthorization Act of 2013 provides that "a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been a victim of domestic violence, sexual violence, dating violence, sexual assault or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit."

TDHCA Policy

If the family and the owner mutually agree to terminate the lease for the family' unit, both parties must complete and submit a Tenant/ Landlord Agreement Not to Renew 60-days before the lease expires.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give the PHA a copy of any owner eviction notice [24 CFR 982.551(g)].
- 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)].

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 [24 CFR 982.314(e)(1)].

The PHA may deny a family permission to move if the PHA does not have sufficient funding for continued assistance.

TDHCA Policy

The Department will deny a family permission to move on grounds that the Department does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the Department; (b) the Department can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) the Department can demonstrate, through a detailed cost-reduction plan based on reasonable assumptions, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs. This policy applies to moves within the Department's jurisdiction as well as to moves outside it under portability.

Grounds for Denial or Termination of Assistance

The PHA has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)].

TDHCA Policy

If the Department has grounds for denying or terminating a family's assistance, the Department will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances.

Restrictions on Elective Moves [24 CFR 982.314(c)]

HUD regulations permit 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.

TDHCA Policy

The Department will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the Department's jurisdiction or outside it under portability.

The Department will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the Department's jurisdiction. This also means that most families will not be given permission to move until their Annual Reexamination appointment.

The Department will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, and witness protection programs), to accommodate a change in family circumstances (e.g., new employment,

school attendance in a distant area), or to address an emergency situation over which a family has no control. For a family to be able to move under one of the above reasons, the family must provide the Department with proper documentation to support the need to move (e.g., inspection report, neighborhood report, police report, employment offer letter, official school documentation, etc.).

In addition, the Department will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

MOVING PROCESS

Notification

If a family wishes to move to a new unit, the family must notify 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 2004-12]. The notices must be in writing [24 CFR 982.5].

Approval

TDHCA Policy

Upon receipt of a family's notification that it wishes to move, the Department will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. If the family is requesting to move at any time other than their annual renewal appointment, the Department Regional Coordinator (RC)/LO representative will notify the family of the Department's decision within 10 business days following receipt of the family's notification.

Reexamination of Family Income and Composition

TDHCA Policy

For families approved to move to a new unit within the Department's jurisdiction, the Department will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into a unit or families approved to move out of the Department's jurisdiction under portability, the Department will follow the policies set forth in Part II of this chapter.

Voucher Issuance and Briefing

TDHCA Policy

For families approved to move to a new unit within the Department's jurisdiction, the Department will issue a new voucher within 10 business days of the Department's written approval to move. No briefing is required for these families. The Department will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the Department approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the Department's jurisdiction under portability, the Department will follow the policies set forth in Part II of this chapter.

Housing Assistance Payments [24 CFR 982.311(d)]

When a family moves out of an assisted unit, the PHA may not make any housing assistance payment to the owner for any month after the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit.

Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

PART II: PORTABILITY

OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The first PHA is called the initial PHA. The second is called the receiving PHA.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds, and the initial PHA has no further relationship with the family.

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. 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.

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. The initial PHA, in accordance with HUD regulations and PHA policy, determines whether a family qualifies.

Applicant Families

Under HUD regulations, most applicant families qualify to lease a unit outside 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.

TDHCA Policy

The Department will accept ported vouchers within our jurisdiction but only if the initial PHA releases the voucher and enables the permanent absorption by TDHCA.

In determining whether or not to deny an applicant family permission to move under portability because the Department lacks sufficient funding or has grounds for denying assistance to the family, the Department will follow the policies established in section 10-I.B of this chapter.

In addition, 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)].

TDHCA Policy

If neither the head of household nor the spouse/co-head of an applicant family had a domicile (legal residence) in the Department's jurisdiction at the time the family's application for assistance was submitted, the family must live in the Department's jurisdiction with voucher assistance for at least 12 months before requesting portability. The Department will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2). However, any exception to this policy is subject to the approval of the receiving PHA.

Participant Families

The Initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. [24 CFR 982.3539b.)]

TDHCA Policy

The Department will determine whether a participant family may move out of the Department's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. The Department will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

Determining Income Eligibility

Applicant Families. An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d) (3)]. The family must specify the area to which the family wishes to move [Notice 2004-12]. The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c) (1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2004-12].

Participant Families: The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d) (2), 24 CFR 982.355(c) (1)].

Reexamination of Family Income and Composition

No new reexamination of family income and composition is required for an applicant family.

TDHCA Policy

For a participant family approved to move out of its jurisdiction under portability, the Department generally will not conduct a reexamination of family income and composition unless the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

The Department will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

Briefing

The regulations and policies on briefings set forth in Chapter 5 of this plan require 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.

TDHCA Policy

No formal briefing will be required for a participant family wishing to move outside the Department's jurisdiction under portability. However, the Department will provide the family with the same oral and written explanation of portability that it provide to applicant families selected for admission to the program (see Chapter 5). The Department will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. The Department will advise the family that they will be under the receiving PHA's policies and procedures, including subsidy standards and voucher extension policies.

Voucher Issuance and Term [24 CFR 982.353(b)]

An applicant family has no right to portability until after the family has been issued a voucher. In issuing vouchers to applicant families, the Department will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

TDHCA Policy

For families approved to move under portability, the Department will issue a new voucher within 10 business days of the Department's written approval to move. The initial term of the voucher will be 60 days.

Voucher Extensions and Expiration

TDHCA Policy

The Department will approve no extensions to a voucher issued to an applicant or participant family porting out of the Department's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the Department's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the Department's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of the Department's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

Initial Contact with the Receiving PHA

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR 982.355(c) (2)]. This means that the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2004-12]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c) (2)].

TDHCA Policy

Because the portability process is time-sensitive, the Department will notify the receiving PHA by phone, fax, or e-mail to expect the family. The Department will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, e-mail and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance.

The Department will pass this information along to the family. The Department will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

Sending Documentation to the Receiving PHA

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2004-12]
- A copy of the family's voucher [Notice PIH 2004-12]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2004-12]
- Copies of the income verifications backing up the form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2004-12]
- Notification to confirm if the PHA is billing or absorbing.

TDHCA Policy

In addition to these documents, the Department will provide the following information, if available, to the receiving PHA:

- Last EIV print out
- Social security numbers (SSNs);
- Documentation of SSNs for all family members age 6 and over;
- Documentation of legal identity;
- Documentation of citizenship or eligible immigration status;
- Documentation of participation in the earned income disallowance (EID) benefit;
- Documentation of participation in a family self-sufficiency (FSS) program.

The Department will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

Initial Billing Deadline [Notice PIH 2004-12]

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

TDHCA Policy

If the Department has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail on the next business day. If the Department reports that the family is not yet under HAP contract, the Department will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family.

The Department will send the receiving PHA a written confirmation of its decision by mail.

The Department will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2004-12]

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. The receiving PHA must receive subsequent payments no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of over leasing or funding shortfalls. 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.

TDHCA Policy

The Department will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the Department that direct deposit is not acceptable to them.

Annual Updates of Form HUD-50058 and 52665

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 and 52665 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 and 52665 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family.

Subsequent Family Moves

- Within the Receiving PHA's Jurisdiction [24 CFR 314(e)(1), Notice PIH 2005-1]. The initial PHA has the authority to deny subsequent moves by portable families whom it is assisting under portability billing arrangements if it does not have sufficient funding for continued assistance.

TDHCA Policy

If the Department determines that it must deny moves because it lacks sufficient funding (see section 10-I.B), it will notify all receiving PHAs with which it has entered into portability billing arrangements that they, too, must deny moves to higher cost units by portable families from the Department's jurisdiction.

The Department will allow exceptions to this policy for purposes of reasonable accommodation of a family member who is a person with disabilities.

- Outside the Receiving PHA's Jurisdiction [Notice PIH 2004-12]. If the initial PHA is assisting a portable family under a billing arrangement and the family subsequently decides to move out of the receiving PHA's jurisdiction, the initial PHA is responsible for issuing the family a voucher while the family is either being assisted or has a voucher from the receiving PHA and, if the family wishes to port to another jurisdiction, sending form HUD-52665 and supporting documentation to the new receiving PHA. Any extensions of the initial PHA voucher necessary to allow the family additional search-time to return to the initial PHA's jurisdiction or to move to another jurisdiction would be at the discretion of the initial PHA.

Denial or Termination of Assistance [24 CFR 982.355(c)(9)]

If the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the initial PHA may act on those grounds at any time. (For PHA policies on denial and termination, see Chapters 3 and 12, respectively.)

RECEIVING PHA ROLE

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)].

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

Initial Contact with Family

When a family moves into 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 2004-12].

When a portable family requests assistance from the receiving PHA, the receiving PHA must promptly inform the initial PHA whether the receiving PHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)].

If the receiving PHA initially bills the initial PHA for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2004-12]. (See later under "Absorbing a Portable Family" for more on this topic.)

TDHCA Policy

The Department must promptly inform the initial PHA if it intends to absorb or bill. The Department sends Part II of HUD Form 52665 to the initial PHA. If the Department decides to bill the initial PHA, the Department not only completes Part II of HUD Form 52665, but also attaches a copy of the new HUD form 50058 before returning it to the initial PHA. In addition to the initial billing deadline discussed above, the instructions of the HUD Form 52665 provide that the Department must complete and mail (which may include electronic mail or fax) Part II of the form within 10 working days from the date a HAP contract is executed on behalf of a family.

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2004-12]. (For more on this topic, see later under "Denial or Termination of Assistance.")

Briefing

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2004-12].

TDHCA Policy

The Department will not require the family to attend a briefing. The Department will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about the Department's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

Income Eligibility and Reexamination

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 2004-12, 24 CFR 982.201(b)(4)]. The receiving PHA does not redetermined income eligibility for a

portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(1)].

TDHCA Policy

For any family moving into its jurisdiction under portability, the Department will conduct a new reexamination of family income and composition. However, the Department will not delay issuing the family a voucher for this reason. Nor will the Department delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the Department cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, the Department will rely upon any verification provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

Voucher Issuance

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(b) (6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c) (6)].

Timing of Voucher Issuance

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 2004-12].

TDHCA Policy

When a family ports into the Department's jurisdiction, the Department will generally issue the family a voucher within 10 business days. If the family paperwork is on time, complete, the voucher from the initial PHA has not expired and the family complies with all the Department's procedures. The Department will update the family's information when verification has been completed.

Voucher Term

The term of the receiving PHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c) (6)].

TDHCA Policy

The Department's voucher will expire on the same date as the initial PHA's voucher.

Voucher Extensions [24 CFR 982.355(c)(6), Notice 2004-12]

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

TDHCA Policy

The Department generally will not extend the term of the voucher that it issues to an incoming portable family unless the Department plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

The Department will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Notifying the Initial PHA

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e)(5), Notice PIH 2004-12]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher,")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case, the voucher of record for the family is once again the voucher originally issued by the initial PHA.

Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction. [Notice PIH 2004-12]

Administering a Portable Family's Voucher

Initial Billing Deadline

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the receiving PHA executes a HAP contract on behalf of the family and (b) in time that the notice will be received no later than 60 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2004-12]. A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

TDHCA Policy

The Department will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is over leased) [Notice PIH 2004-12].

Ongoing Notification Responsibilities [Notice PIH 2004-12, HUD-52665]

Annual Reexamination. The receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

TDHCA Policy

The Department will send a copy of the updated HUD Form 50058 and 52665 by regular mail at the same time the family and owner are notified of the reexamination results.

Change in Billing Amount - The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.);
- An abatement or subsequent resumption of the HAP payments;

- Termination of the HAP contract;
- Payment of a damage/vacancy loss claim for the family; and
- Termination of the family from the program.

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount.

Late Payments [Notice PIH 2004-12]

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency.

The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between 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 2004-12]

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA .

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2004-12 .

Denial or Termination of Assistance

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(10)].

In the case of a termination, 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 2004-12]

TDHCA Policy

If the Department elects to deny or terminate assistance for a portable family, the Department will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. The Department will base its denial or termination decision on the policies set

forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The Department will furnish the initial PHA with a copy of the review or hearing decision.

Absorbing a Portable Family

The receiving PHA may absorb an incoming portable family into its own program when 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 over leasing [24 CFR 982.355(d)(1), Notice PIH 2004-12].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b) (2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family. [Notice PIH 2004-12]

TDHCA Policy

If the Department decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the Department will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If the Department decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability.

Chapter 11: REEXAMINATIONS

INTRODUCTION

In accordance with HUD requirements, the PHA will reexamine the income and household composition of all families at least annually. Families will be provided accurate annual and interim rent adjustments. Recertifications and interim examinations will be processed in a manner that ensures families are given reasonable notice of rent increases. All annual activities will be coordinated in accordance with HUD regulation. It is a HUD requirement that families report all changes in household composition. It also explains the interim reporting requirements for families, and the standards for timely reporting. Interim reexaminations are also needed in certain situations.

This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and PHA's policies concerning reexaminations are presented in three parts:

Part I: Annual and Triennial Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]

OVERVIEW

The PHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. The PHA will conduct a reexamination once every three years (triennially) for all fixed sources of income. Income consists solely of periodic payments at reasonable predictable levels. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

B. SCHEDULING ANNUAL REEXAMINATIONS

The PHA must establish a policy to ensure that the annual reexamination for each family is completed within a 12-month period, and may require reexaminations more frequently [HCV GB p. 12-1].

TDHCA Policy

The Department will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, the Department 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). Records shall be maintained by the Department to insure that every participant's income and family composition has been re-examined within a twelve-month period.

If the family moves to a new unit, the Department will perform a new annual reexamination.

Notification of and Participation in the Annual Reexamination Process

The PHA is required to obtain the information needed to conduct annual reexaminations. How the information will be collected is left to the discretion of the PHA .

TDHCA Policy

Families generally are required to participate in an annual reexamination interview. Interviews may be conducted face-to-face or mail-in. The head of household, spouse, co-head must participate the briefing. If participation poses a hardship because of a family member's disability, the family should contact the Department to request a reasonable accommodation (see Chapter 2).

Notification of the annual reexamination briefing/ interview will be sent by mail from the Department 120 days prior to the families' annual reexamination date. The notification will inform the family of the information and documentation required for the briefing/ interview. In addition, the letter will indicate that the family must contact their LO/ Department to schedule an inspection.

If the family is unable to participate in a scheduled briefing/ interview, the family should contact the LO/ Department prior to the briefing date or deadline to return renewal document. If the family does not contact the Department, an Intent to Terminate notice will be mailed. If the family does not participate in a scheduled briefing/ interview, the LO/ Department will contact them to reschedule an appointment.

If the family fails to participate in two scheduled briefings/ interviews without Department approval, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process.

CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the PHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

TDHCA Policy

Families will be asked to bring or submit all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a Department-designated Personal Declaration form, an Authorization for the Release of Information/Privacy Act Notice, Child Support printouts, Income and Social Security award letters. Families will also be required to bring any supporting documentation related to the family's income, expenses, family composition, and assets.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time-frame (plus any extensions), the family will be sent an Intent to Termination Notice (See Chapter 12).

The Annual HQS inspection, including follow up re-inspections must be completed and submitted with the Annual Reexamination/Moving packets to the RC prior to the renewal date.

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity;
- Age;
- Social security numbers;
- A person's disability status; and
- Citizenship or immigration status.

If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (HQS) (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403] .

DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]

Section 327 of Public Law 109-115 established new restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education. If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from his or her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

TDHCA Policy

During the annual reexamination process, the PHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), the PHA will process a reexamination in accordance with the policies in this chapter.

EFFECTIVE DATES

The PHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

TDHCA Policy

An increase in the family share of the rent that results from an annual reexamination will take effect on the 1st day of the family's anniversary date, and the family will be notified, in writing, at least 30 days in advance. If notice is not mailed timely, the PHA will absorb the families increase portion for the month of the effective date.

Copies of such notifications will be retained in the participants file for (1) any change in rent and the date on which it becomes effective and (2) any change required because of a change in the composition of the family.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If the family causes a delay in processing the annual reexamination, increases in the family share of the rent will be applied retroactively to the scheduled effective date of the annual reexamination. The family will be responsible for any decrease that may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a decrease in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If the family causes a delay in processing the annual reexamination, decreases in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the Department by the date specified, and this delay prevents the Department from completing the reexamination as scheduled.

Reexamination Notice to the Family

The PHA will maintain a reexamination tracking system and the household will be notified by mail of the date and time for their interview at least 90 – 120 calendar days in advance of the anniversary date, unless it has been rescheduled or file reinstated. The PHA has developed a computerized tracking report to ensure all annual re-certifications are completed prior to the last annual date.

If requested as an accommodation by a person with a disability, the PHA will provide the notice in an accessible format. The PHA will also mail the notice to a third party, if requested as reasonable accommodation for a person with disabilities. These accommodations will be granted upon verification that they meet the need presented by the disability.

Completion of Annual Recertification

The PHA will have all re-certifications for families completed before the anniversary date. This includes notifying the family of any changes in rent at least 30 days before the scheduled date of the change in family rent.

Collection of Information [24 CFR 982.516(f)]

The PHA has established appropriate recertification procedures necessary to ensure that the income data provided by families is complete and accurate. The PHA will require the family to complete an application for Continued Occupancy form prior to all recertification interviews.

PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]

OVERVIEW

Family circumstances may change throughout the period between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. HUD regulations also permit the PHA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the 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 PHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how the PHA will process both PHA- and family-initiated interim reexaminations.

CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

The PHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to family obligations under the program, the PHA has limited discretion in this area.

TDHCA Policy

The Department will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

New Family Members Not Requiring Approval [24 CFR 982.551(h)(2)].

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition.

TDHCA Policy

The family must inform the Department of the birth, adoption or court-awarded custody of a child within 10 business days, but may request additional time.. However, documentation required for guardianship are:

Court-ordered assignment

School records

Verification from Social Services agency/ Supplemental Nutrition Assistance Program (SNAP) showing family members

Self-certification of temporary guardianship or appointment from parent

New Family and Household Members Requiring Approval

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the PHA 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)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403] .

TDHCA Policy

Families must request Department approval to add a new family member, live-in aide, foster child, or foster adult. Any person not on the lease who is expected to stay in the unit longer than 30 consecutive days, or 60 cumulative days, within a twelve-month period, no longer qualifies as a "guest." Requests must be made in writing and approved by the Department.

Before the Department will consider approval of the new addition to the household, the Department must receive a written letter from the owner of the property approving the addition.

The Department will not approve the addition of a new family or household member unless the individual meets the Department's eligibility criteria (see Chapter 3).

The Department will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If the Department determines an individual meets the Department's eligibility criteria as defined in Chapter 3 and the owner approves the new addition, the Department will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued another voucher and will be required to move.

If the Department determines that an individual does not meet the Department's eligibility criteria as defined in Chapter 3, the Department will notify the family and owner of its decision to deny approval of the new family or household member and the reasons for the denial. In the case where the Department does not approve the addition of an individual to the household, but the owner does approve of the addition, the Department's ruling will stand.

The Department will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

Departure of a Family or Household Member

Families must promptly notify the PHA 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 PHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

TDHCA Policy

If a household member ceases to reside in the unit, the family must inform the Department within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the Department within 10 business days. (see Chapter 7)

Family members who have been removed from the lease at the family's request may not re-enter the household until the next annual recertification, and then only with the PHAs permission.

CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

PHA-Initiated Interim Reexaminations

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the PHA. They are not scheduled because of changes reported by the family.

TDHCA Policy

The Department will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), the Department will conduct an interim reexamination at the start and conclusion of the second 12 month exclusion period (50 percent phase-in period).¹

If the family has reported zero income, the Department will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.

Family-Initiated Interim Reexaminations

The PHA 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 PHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

TDHCA Policy

Families are required to report all increases in earned income for any wage earner eighteen (18) years of age or older, including new employment or loss of employment, within 10 business days of the date the change takes effect.

The starting of or stopping of, or an increase of or decrease of any benefits or payments received by any member of the family or household from:

- a. Old Age Pension;
- b. Aid for Dependent Children (TANF);
- c. Black Lung;
- d. Railroad Retirement;
- e. Private Pension Fund;
- f. Disability Compensation;
- g. Veterans Administration;
- h. Child Support;
- i. Alimony;
- j. Regular Contributions; or
- k. Gifts.

Lump sum payments or retroactive payments of benefits from any of the above sources that constitute the sum of monthly payments for a preceding period paid in a lump sum must be reported and rent adjusted retroactively on such income to date of eligibility for any family member residing in the household for that period of time.

Cost of living increases in Social Security or public assistance grants need not be reported until next re-examination and re-determination of rent.

Errors of omission made while admitted to the program shall be corrected at the re-examination. Retroactive payments will be made to the participant if the error is in his/her favor.

A participant who has had a rent reduction/increase after initial occupancy or after annual re-examination must report all changes in income within ten (10) business days regardless of the amount or source.

The Department will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's share of rent will change as a result of the increase. In all other cases, the PHA will note the information in the tenant file, but will not conduct an interim reexamination.

Families are not required to report any other changes in income or expenses.

Optional Reporting

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b) (2)]. The PHA must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

TDHCA Policy

Families may report changes in income or expenses at any time within ten (10) business days. .

PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

TDHCA Policy

The family may notify the Department of changes in writing. If the family provides oral notice, the Department will require the family to submit the changes in writing.

The family will not be required to attend an interview for an interim reexamination. However, if the Department determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the Department will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from the Department. This time-frame may be extended for good cause with Department approval. The Department will accept required documentation by email, mail, fax, or in person.

Interim increases in Tenant Rent will be made only when:

1. The tenant has misrepresented any facts related to income or deductions from income;
 2. The tenant has claimed zero income and has been verified to have cash or non-cash income;
- or
3. The tenant has experienced an increase in income of at least \$3,000 per year after having received an interim decrease in rent. If yearly income verified thru 3rd party verification is less than the minimum yearly amount, the Department will not process the interim change and file the documents in the file.

Effective Dates

The PHA must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

TDHCA Policy

The family must report changes in income before the 15th of the month in order to have the decreased rent effective for the first of the following month.

If paperwork to process the reduction is not received by the 15th of the month, the decreased rent may not be effective by the first of the following month. Therefore, the family will be responsible for the rent until the change has been processed.

If the family share of the rent is to increase:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time-frames, or fails to provide all required information within the required time-frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis.

The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family causes delays in completing an interim re-certification, the Authority may terminate assistance.

If the family share of the rent is to decrease:

The decrease will be effective on the first day of the month following the month in which the change was reported. All required documentation must be submitted in cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, the PHA must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the PHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

Payment Standards [24 CFR 982.505]

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When the PHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the PHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
 - If the payment standard amount has increased, the increased payment standard will be applied at the first annual reexamination following the effective date of the increase in the payment standard.
 - If the payment standard amount has decreased, 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 PHA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's first annual reexamination following the change in family unit size.

Utility Allowances [24 CFR 982.517(d)]

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the PHA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, the PHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

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

TDHCA 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 by the Department.

NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT

The PHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the PHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

DISCREPANCIES

During an annual or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

Chapter 12: TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a PHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by the PHA based on the family's behavior.

Part II: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that the PHA may consider in lieu of termination, the criteria the PHA must use when deciding what action to take, and the steps the PHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part presents the policies that govern the owner's right to terminate an assisted tenancy.

PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

OVERVIEW

HUD requires the PHA to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits the PHA to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying the PHA.

FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of PHA subsidy goes down. If the amount of HCV assistance provided by the PHA drops to zero and remains at zero for 180 consecutive calendar days the family's assistance terminates automatically.

TDHCA Policy

If a participating family receiving assistance experiences a change in circumstances that would cause the HAP payment to increase, the family must notify the Department within 30 days of the changed circumstances and request an interim reexamination 30 days before the expiration of the 180-day period.

FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that the PHA terminate the family's assistance at any time.

TDHCA Policy

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or co-head. Before terminating the family's assistance, the Department will follow the notice requirements in Section 12-II.E.

MANDATORY TERMINATION OF ASSISTANCE

HUD requires the PHA to terminate assistance in the following circumstances.

Eviction [24 CFR 982.552(b)(2), Pub.L. 109-162]

The PHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. Incident or incidents of actual or threatened domestic violence, sexual violence, dating violence, sexual assault or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

TDHCA 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.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. However, the Department will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-11.C.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises, failure to pay utility bills and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.

Failure to Provide Consent [24 CFR 982.552(b)(3)]

The PHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a 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 PHA 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 PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

Failure to Provide Social Security Documentation [24 CFR 5.218(c), Notice PIH-2010-3]

The PHA must terminate assistance if a participant family fails to provide the documentation or certification required for any family member and documentation necessary to verify each social security number.

If the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirements within the period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

TDHCA Policy

The PHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for the circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA.

Methamphetamine Manufacture or Production [24 CFR 983.553(b) (1)(ii)]

The PHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.

MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS

Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]

HUD requires the PHA to establish policies that permit the PHA to terminate assistance if the PHA determines that:

- Any household member is currently engaged and convicted of any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents;
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity; and
- Any household member has violated the family's obligation not to engage in violent criminal activity.
- Any household member has ever been convicted of drug related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing

Use of Illegal Drugs and Alcohol Abuse

TDHCA Policy

If any household member is currently engaged in, or convicted in any of the following criminal activities, within the past five (5) years, the family will be terminated:

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

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

A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity. A pattern of illegal use of drugs or violent criminal activity, whether established by one or more arrests or one or more convictions of the same or similar criminal activity will be given more weight than a single arrest for such activity.

A record that an applicant or household member has been paroled or released from a facility for violence to persons or property.

In making its decision to terminate assistance, the Department will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the Department may, on a case-by-case basis, choose not to terminate assistance.

Drug-Related and Violent Criminal Activity [24 CFR 5.100]

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

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

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

TDHCA Policy

The Department will terminate a family's assistance if any household member has been convicted of any drug-related or violent criminal activity during participation in the HCV program.

The Department will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, the Department will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the Department may, on a case-by-case basis, choose not to terminate assistance.

Other Authorized Reasons for Termination of Assistance [24 CFR §982.552(c)]

HUD permits the PHA to terminate assistance under a number of other circumstances. It is left to the discretion of the PHA whether such circumstances in general warrant consideration for the termination of assistance.

TDHCA Policy

The Department will not terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency or Welfare to Work voucher programs.

The Department will terminate a family's assistance if:

- The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related PHA policies.
- Any family member has been evicted from federally-assisted housing in the last five years.
- Any PHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs.
- The family has not reimbursed any PHA for amounts 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 Department.
- The family does not provide complete and true information to the PHA.
- The family does not provide information that the PHA or HUD determines is necessary in determining program eligibility.
- The family failed to disclose and verify social security numbers and submit and sign consent forms for obtaining information.

- Has made fraudulent misrepresentation on his/her application for HCV assistance.
- A family member has engaged in or threatened violent or abusive behavior toward Department personnel.

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

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

In making its decision to terminate assistance, the Department will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the Department may, on a case-by-case basis, choose not to terminate assistance under the above list.

Family Absence from the Unit [24 CFR §982.312]

The family may be absent from the unit for brief periods. The PHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 90 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

TDHCA Policy

If the family is absent from the unit for more than 90 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with this section.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

OVERVIEW

The PHA is required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give the PHA the discretion either to terminate the family's assistance or to take another action.

This part discusses the various actions the PHA may choose to take when it has discretion, and outlines the criteria the PHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

The way in which the PHA terminates assistance depends upon individual circumstances. HUD permits the PHA to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.

12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition

As a condition of continued assistance, the PHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c) (2)(ii)].

TDHCA 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 Department request.

Repayment of Family Debts

TDHCA Policy

If a family owes amounts to the Department, as a condition of continued assistance, the Department will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the Department of the amount owed. No other repayment agreement will be entered upon. See Chapter 16 for policies on repayment agreements.

CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

Evidence

For criminal activity, HUD permits the PHA to terminate assistance if a preponderance of the evidence indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

TDHCA Policy

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

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

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

The PHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

TDHCA Policy

The Department will consider the following factors when making its decision to terminate assistance:

- The seriousness of the case, especially with respect to how it would affect other residents;
- The effects that termination of assistance may have on other members of the family who were not involved in the action or failure;
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities;
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future;

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

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

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

If the family includes a person with disabilities, the PHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8 .

TDHCA 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 Department will determine whether the behavior is related to the disability. If so, upon the family's request, the Department will determine whether alternative measures are appropriate as a reasonable accommodation. The Department will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed termination of assistance. See Chapter 2 for a discussion of reasonable accommodation.

TERMINATION NOTICE [HCV GB, p. 15-7]

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the PHA must give the family and the owner written notice that specifies:

- The reasons for which assistance has been terminated,
- The effective date of the termination, and
- The family's right to an informal hearing as described in Chapter 16.

If a criminal record is the basis of the termination, a copy of the record must accompany the notice. A copy of the criminal record also must be provided to the subject of the record [24 CFR 982.553(d)].

TDHCA Policy

When the Department initiates termination, the notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination. However, if a family vacates the unit without informing the Department, 30 days notice will not be given. In these cases, the notice to terminate will be sent at the time the Department learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to the Department (see section 12-I.C.). The Department will then send a confirmation notice to the family and the owner no later than the termination effective date (as requested by the family).

Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

The PHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) the PHA determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the right to request an appeal to the USCIS of the

results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and that they have the right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

TDHCA Policy

The notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination.

HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE

When the family's assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

PART III: TERMINATION OF TENANCY BY THE OWNER

OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; the PHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

GROUND FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310 and Form HUD-52641-A, Tenancy Addendum]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

Serious or Repeated Lease Violations

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease. This includes failure to pay rent or other amounts due under the lease. However, the PHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

Violation of Federal, State, or Local Law

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

Criminal Activity or Alcohol Abuse

The owner may terminate tenancy during the term of the lease if any covered person, meaning any member of the household, a guest or another person under the tenant's control commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Evidence of Criminal Activity

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction.

Other Good Cause

During the initial lease term, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, "other good cause" for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent).

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action. The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the PHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the PHA a copy of any eviction notice (see Chapter 5).

TDHCA Policy

If the eviction action is finalized in court, the owner must provide the Department with documentation related to the eviction, including notice of the eviction date, as soon as possible following the court-ordered eviction.

DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h)]

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

EFFECT OF TERMINATION OF TENANCY ON THE FAMILY'S ASSISTANCE

If a termination is not due to a serious or repeated violation of the lease, and if the PHA has no other grounds for termination of assistance, the PHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS

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

- The family must supply any information that the PHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- 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.

TDHCA 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 PHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

TDHCA Policy

The Department will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.

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

TDHCA Policy

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

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

TDHCA Policy

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

EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS cont.

- The family must promptly notify the PHA in writing if any family member no longer lives in the unit.
- If the PHA has given approval, a foster child or a live-in aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when PHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).

- The family must not sublease the unit, assign the lease, or transfer the unit.

TDHCA Policy

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

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

TDHCA 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 Department at the start of the extended absence.

- The family must pay utility bills, provide, and maintain any appliances that the owner is not required providing under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and PHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

Chapter 13: OWNERS

INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in the PHA's HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between the PHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including PHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

PART I: OWNERS IN THE HCV PROGRAM

OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]

Recruitment

PHAs are responsible for ensuring that very low-income families have access to all types and ranges of affordable housing in the PHA's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the PHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the PHA's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program.

TDHCA Policy

The Department will conduct owner outreach within its jurisdiction to ensure that owners are familiar with the program and its advantages. The Department will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies may include:

Distributing printed material about the program to property owners and managers;

Contacting property owners and managers by phone or in-person;

Participating in community based organizations comprised of private property and apartment owners and managers; and

Developing working relationships with owners and real estate brokers associations.

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

Retention

In addition to recruiting owners to participate in the HCV program, the PHA must also provide the kind of customer service that will encourage participating owners to remain active in the program.

TDHCA Policy

All Department activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

The Department will provide owners with a Landlord handbook that explains the program, including HUD and PHA policies and procedures, in easy-to-understand language.

The Department will give special attention to helping new owners succeed through activities such as:
Providing the owner with a designated Department contact person;

Coordinating inspection and leasing activities between the Department, the owner, and the family;

Initiating telephone contact with the owner to explain the inspection process and HUD Housing Quality Standards;

Provide an inspection booklet, other written information how the program operates resource materials about HUD housing quality standards; and

Additional services may be undertaken on an as-needed basis, and as resources permit.

BASIC HCV PROGRAM REQUIREMENTS

HUD requires the PHA to aid families in their housing search by providing the family with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the PHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the PHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

TDHCA 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 LO/ Department in their area. The LO/ Department will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. The PHA 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 PHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history

with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The PHA will inspect the owner's dwelling unit at various stages of HCV program participation, to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.

The PHA must determine that the cost of the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, the PHA must determine that 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)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The PHA and the owner enter into a formal contractual relationship by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). HUD prescribes the HAP contract format. See chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this chapter 13.

OWNER RESPONSIBILITIES [24 CFR 982.452]

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract;
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit;
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance;
- Complying with equal opportunity requirements;
- Preparing and furnishing to the PHA information required under the HAP contract;
- Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from the PHA), and any charges for unit damage by the family;
- Enforcing tenant obligations under the dwelling lease;
- Paying for utilities and services (unless paid by the family under the lease); and
- Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203].

OWNER QUALIFICATIONS

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

Owners Barred from Participation [24 CFR 982.306(a) and (b)]

The PHA must not approve the assisted tenancy if the PHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the PHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]

The PHA must not approve an RTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The PHA 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 PHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the PHA (except a participant commissioner);
- Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs;
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; and
- Any member of the Congress of the United States.

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The PHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the PHA must include [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, the PHA, 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 PHA or assistance under the HCV program for an eligible PHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program; and
- If the case involves an investment on the part of a member, officer, or employee of the PHA, description of the nature of the investment, including disclosure/divestiture plans.

Where the PHA has requested a conflict of interest waiver, the PHA may not execute the HAP contract until HUD has made a decision on the waiver request.

TDHCA Policy

In considering whether to request a conflict of interest waiver from HUD, the Department will consider the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]

HUD regulations permit the PHA, at the PHA's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If the PHA 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].

TDHCA Policy

The Department will refuse to approve a request for tenancy if any of the following are true:

- The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);
- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The owner has engaged in any drug-related criminal activity or any violent criminal activity;
- The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;
- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;
- The owner has a history or practice of renting units that fail to meet state or local housing codes; and
- The owner has not paid state or local real estate taxes, fines, or assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the PHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others.

Legal Ownership of Unit

The following represents PHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

TDHCA Policy

The Department will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year).

NON-DISCRIMINATION [HAP Contract – Form HUD-52641]

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the PHA.

The owner must cooperate with the PHA 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 PHA.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

PART II: HAP CONTRACTS

OVERVIEW

The HAP contract represents a written agreement between the PHA 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 PHA's obligations. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space.

See chapter 15 for a discussion of any special housing types included in the PHA's HCV program.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

HAP CONTRACT CONTENTS

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract.

The HAP contract contains three parts.

Part A of the contract includes basic contract information about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial

monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of PHA and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract that prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. PHA policy on the amount of security deposit an owner may collect is found in Chapter 9.

In addition, PHAs have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

TDHCA Policy

The Department has not adopted a policy that defines when the housing assistance payment by the Department is deemed received by the owner. Therefore, no modifications to the HAP contract will be necessary.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit;
- Maintenance, Utilities, and Other Services;
- Term of HAP Contract;
- Provision and Payment of Utilities and Appliances;
- Rent to Owner: Reasonable Rent;
- PHA Payment to Owner;
- Prohibition of Discrimination;
- Owner's Breach of HAP Contract;
- PHA and HUD Access to Premises and Owner's Records;
- Exclusion of Third Party Rights;
- Conflict of Interest;
- Assignment of the HAP Contract;
- Written Notices; and
- Entire Agreement Interpretation;

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the PHA. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, the PHA must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. The PHA 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.

Part of the PHA's efforts to streamline business processes are to recommend owners to set-up with direct deposit. In the event the owner declines, a written request must be submitted and recorded in the owner's file.

Checks that are not received will not be replaced until 10 business days have passed from the date of the mailing, and a written request has been received from the payee to stop payment and re-issue.

The monthly HAP payment by the PHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus the PHA HAP payment, should be equal to the rent specified in the lease (the rent to owner).

The family is not responsible for payment of the HAP payment, and the PHA 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 total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b) (4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the PHA, the excess amount must be returned immediately. If the PHA determines that the owner is not entitled to all or a portion of the HAP, the PHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP.

Owner Certification of Compliance

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from the PHA, 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 PHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if the PHA 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 PHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the PHA's control. In addition, late payment penalties are not required if the PHA 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

The PHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the PHA 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.

TDHCA Policy

The owner must inform the Department when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the Department when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the Department with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the Department will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier (unless the unit fails to meet HQS or the Owner violates some other part of the HCV program). The owner must inform the Department of the date when the family actually moves from the unit or the family is physically evicted from the unit.

BREACH OF HAP CONTRACT [24 CFR 982.453]

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS;
- If the owner has violated any obligation under any other HAP contract under Section 8;
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan;
- If the owner has engaged in drug-related criminal activity;
- If the owner has committed any violent criminal activity; and

If the PHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

The PHA rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination the HAP contract. The PHA may also obtain additional relief by judicial order or action.

The PHA 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 PHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

TDHCA Policy

Before the Department invokes a remedy against an owner, the Department will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the Department will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, the Department will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

HAP CONTRACT TERM AND TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The PHA terminates the HAP contract;
- The PHA 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 PHA made the last HAP to the owner;
- The family is absent from the unit for longer than the maximum period permitted by the PHA;
- The Annual Contributions Contract (ACC) between the PHA and HUD expires; and
- The PHA elects to terminate the HAP contract .

TDHCA Policy

The Department may elect to terminate the HAP contract in each of the following situations:

Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];

The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;

The unit does not meet HQS [24 CFR 982.404] – see chapter 8;

The family breaks up [HUD Form 52641] – see chapter 3; and

The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the PHA terminates the HAP contract, the PHA 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].

TDHCA Policy

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the Department gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to the Department any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]

The HAP contract cannot be assigned to a new owner without the prior written consent of the PHA.

An owner under a HAP contract must notify the PHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the PHA.

The assignment will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the PHA finds acceptable. The new owner must provide the PHA with a copy of the executed agreement and recorded deed.

TDHCA Policy

The Department 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 Department will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the Department that includes:

- Recorded deed, copy of the escrow statement/ or document showing the transfer of title;
- Copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
- The effective date of the HAP contract assignment;
- Management Agreement to comply with the terms of the HAP contract
- Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the Department will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the Department will process the leasing in accordance with the policies in chapter 9.

Chapter 14: PROGRAM INTEGRITY

INTRODUCTION

The PHA is committed to ensuring that subsidy funds made available to the PHA are spent in accordance with HUD requirements.

This chapter covers HUD and PHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents PHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the PHA must and may take when errors or program abuses are found.

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

PREVENTING ERRORS AND PROGRAM ABUSE

TDHCA Policy

The Department anticipates that the vast majority of families, owners, and Department employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the Department's HCV program is administered effectively and according to the highest ethical and legal standards, the Department will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The Department will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

The Department will provide each applicant and participant with the publication *Things You Should Know* (HUD-1140-OIG) that explains the types of actions a family must avoid and the penalties for program abuse.

The Department will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key Department forms and form letters that request information from a family or owner.

Department staff will be required to review and explain the contents of all HUD- and Department-required forms prior to requesting family member signatures.

The Department will provide all first-time owners (or their agents) with Landlord Informational packets.

The Department will provide each Department employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter, the term error refers to an unintentional error or omission. Program abuse or fraud refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, the PHA 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 PHA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

TDHCA Policy

In addition to the SEMAP quality control requirements, the Department will employ a variety of methods to detect errors and program abuse.

The Department routinely will use available sources of enterprise income verification to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The Department will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all PHAs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies the PHA of errors and potential cases of program abuse.

TDHCA Policy

The Department will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the Department's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

TDHCA Policy

The Department will encourage staff, program participants, and the public to report possible program abuse.

INVESTIGATING ERRORS AND PROGRAM ABUSE

When the PHA Will Investigate

TDHCA Policy

The Department will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the Department to investigate, the allegation must contain at least one independently verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The Department will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

Consent to Release of Information [24 CFR 982.516]

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require HCV families to give consent to the release of additional information.

Analysis and Findings

TDHCA Policy

The Department will base its evaluation on a preponderance of the evidence collected during its investigation.

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

For each investigation, the Department will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed to the Department, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether the PHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

TDHCA Policy

In the case of family-caused errors or program abuse, the Department will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the Department will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

Notice and Appeals

TDHCA Policy

The Department will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the Department determined the error or program abuses, (3) the remedies to be employed, and (4) the families right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).

PART II: CORRECTIVE MEASURES AND PENALTIES

SUBSIDY UNDER- OR OVERPAYMENTS

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the PHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

TDHCA Policy

Increases in the family share will be implemented only after the family has received 30 days 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 PHA or the PHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the PHA to use incorrect information provided by a third party.

Family Reimbursement to PHA [HCV GB pp. 22-12 to 22-13]

TDHCA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The Department may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, the Department will terminate the family's assistance in accordance with the policies in Chapter 12.

PHA Reimbursement to Family [HCV GB p. 22-12]

TDHCA Policy

The Department will not reimburse the family for any underpayment of assistance when the family clearly causes the underpayment.

Prohibited Actions

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the PHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

TDHCA Policy

Any of the following will be considered evidence of family program abuse:

Payment to the owner in excess of amounts authorized by the Department for rent, security deposit, and additional services;

Offering bribes or illegal gratuities to the Department Board of Commissioners, employees, contractors, or other Department representatives;

Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to the Department on the family's behalf;

Use of a false name or the use of falsified, forged, or altered documents;

Intentional misreporting of family information or circumstances (e.g. income, family composition);

Omitted facts that were obviously known by a family member (e.g., not reporting employment income); and

Admission of program abuse by an adult family member.

The Department may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse

In the case of program abuse caused by a family the PHA may, at its discretion, impose any of the following remedies.

- The PHA may require the family to repay excess subsidy amounts paid by the PHA, as described earlier in this section.
- The PHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- The PHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The PHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

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 PHA

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the PHA any excess subsidy received. The PHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the PHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

TDHCA Policy

In cases where the owner has received excess subsidy, the Department will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

Prohibited Owner Actions

An owner participating in the HCV program must not:

- Make any false statement to the PHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

TDHCA 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 Department;
Charging a security deposit other than that specified in the family's lease;
Charging the family for services that are provided to unassisted tenants at no extra charge;
Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit;
Knowingly accepting incorrect or excess housing assistance payments;
Offering bribes or illegal gratuities to the Department Board of Commissioners, employees, contractors, or other Department representatives;
Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the Department; and
Residing in the unit with an assisted family.

Remedies and Penalties

When the PHA determines that the owner has committed program abuse, the PHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any PHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

PHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a PHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the PHA personnel policy.

PHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

Repayment to the PHA

Neither a family nor an owner is required to repay an overpayment of subsidy if PHA staff [HCV GB. 22-12] cause the error or program abuse.

PHA Reimbursement to Family or Owner

The PHA 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 PHA's administrative fee reserves [HCV GB p. 22-12].

Prohibited Activities

TDHCA Policy

Any of the following will be considered evidence of program abuse by Department or LO staff:

Failing to comply with any HCV program requirements for personal gain;

Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner;

Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to the Department;

Disclosing confidential or proprietary information to outside parties;

Gaining profit as a result of insider knowledge of Department activities, policies, or practices;

Misappropriating or misusing HCV funds;

Destroying, concealing, removing, or inappropriately using any records related to the HCV program; and

Committing any other corrupt or criminal act in connection with any federal housing program.

CRIMINAL PROSECUTION

TDHCA Policy

When the Department determines that program abuse by an owner, family, or Department staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the Department will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

FRAUD AND PROGRAM ABUSE RECOVERIES

The PHA may retain a portion of program fraud losses that the PHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The PHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the PHA 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 PHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of the PHA related to the collection, these costs must be deducted from the amount retained by the PHA.

Chapter 15: SPECIAL HOUSING TYPES

[24 CFR 982 Subpart M]

INTRODUCTION

The PHA may permit a family to use any of the special housing types discussed in this chapter. However, the PHA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that PHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. The PHA also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

TDHCA Policy

The Department only operates a Section 8 Housing Choice Voucher Program. Families will not be permitted to use any special housing types, unless use is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

PART I: SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605]

OVERVIEW

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for SRO housing is 75 percent of the 0-bedroom payment standard amount on the PHA's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

HOUSING QUALITY STANDARDS (HQS)

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- **Access:** Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- **Fire Safety:** All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].

- **Sanitary Facilities:** At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one-half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- **Space and Security:** An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable. Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

PART II: CONGREGATE HOUSING

[24 CFR 982.606 through 982.609]

OVERVIEW

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the PHA, a family member or live-in aide may reside with the elderly person or person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the PHA must use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the PHA must use the 1-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

HOUSING QUALITY STANDARDS

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

PART III: GROUP HOME

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

OVERVIEW

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the PHA, a live-in aide may live in the group home with a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be 0- or 1-bedroom, depending on the PHA's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorate share of the payment standard for the group home size. The prorate share is calculated by

dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorate share of the utility allowance for the group home.

The rents paid for participants residing in-group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorate portion of the reasonable rent for the group home. In determining reasonable rent, the PHA should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- **Sanitary Facilities:** A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- **Food Preparation and Service:** Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- **Space and Security:** Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- **Structure and Material:** To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- **Site and Neighborhood:** Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
 - Dangerous walks or steps
 - Instability
 - Flooding, poor drainage
 - Septic tank back-ups
 - Sewage hazards
 - Mud slides
 - Abnormal air pollution
 - Smoke or dust
 - Excessive noise
 - Vibrations or vehicular traffic
 - Excessive accumulations of trash

- Vermin or rodent infestation, and
- Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

PART IV: SHARED HOUSING

[24 CFR 982.615 through 982.618]

OVERVIEW

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorated share of the payment standard for the shared housing unit size.

The prorated 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 prorated 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 PHA should consider whether sanitary and food preparation areas are private or shared.

HOUSING QUALITY STANDARDS

The PHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- Facilities Available for the Family: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.

- **Space and Security:** The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

PART V. COOPERATIVE HOUSING

[24 CFR 982.619]

OVERVIEW

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged, "rent" a cooperative member is charged a "carrying charge."

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

HOUSING QUALITY STANDARDS

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

PART VI: MANUFACTURED HOMES

[24 CFR 982.620 through 982.624]

OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and the PHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. PHAs may, but are not required to, provide assistance for such families.

SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE

Family Income

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

Lease and HAP Contract

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

Payment Standards

The FMR for a manufactured home space is generally 40 percent of the published FMR for a 2-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. The PHA 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 PHA must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

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 PHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The PHA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the Manufactured Home Park or elsewhere.

HOUSING QUALITY STANDARDS

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

Manufactured Home Tie-Down

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

CHAPTER 16: PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes the PHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to the PHA. This part describes policies for recovery of monies that the PHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the PHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect a PHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the PHA will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the PHA'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 PHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

The PHA must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover PHA administrative expenses, the PHA may use these funds for other housing purposes permitted by Federal, State and local law.

If the PHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the PHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

HUD requires the PHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

TDHCA Policy

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. The maximum amount that may be charged against the administrative fee reserve is \$25,000 or as may be adjusted by the PHA official.

PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

OVERVIEW

Although HUD establishes many of the program's requirements centrally, the HCV program's regulations recognize that some flexibility is required to allow the PHA to adapt the program to local conditions. This part discusses how the PHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- Payment Standards, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- Utility Allowances, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

TDHCA Policy

Copies of the payment standard and utility allowance schedules are available for review in the Department's offices during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

The Department will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from the PHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions, FMRs are set at the 40th percentile of rents in the market area.

The PHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit

size, the PHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area.

Unless HUD grants an exception, the PHA is required to establish a payment standard within a “basic range” established by HUD – between 90 and 110 percent of the published FMR for each unit size.

Updating Payment Standards

When HUD updates its FMRs, the PHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the PHA to make further adjustments if it determines that rent burdens for assisted families in the PHA’s jurisdiction are unacceptably high [24 CFR 982.503(g)].

TDHCA Policy

The Department will review the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the “basic range”, the Department will consider the following factors when determining whether and when an adjustment should be made to the payment standard schedule:

Funding Availability: The Department will review the budget to determine the impact that projected subsidy adjustments will have on funding available for the program and the number of families served. The Department will compare the number of families that could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

Rent Burden of Participating Families: Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 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 Department will consider increasing the payment standard. In evaluating rent burdens, the Department will not include families renting a larger unit than required for their family unit size.

Quality of Units Selected: The Department may review the quality of units selected by participant families when making the determination of the percent of income that families are paying for housing to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

Changes in Rent to Owner: The Department may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

Unit Availability: The Department may review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

Lease-up Time and Success Rate: The Department may consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Changes to payment standard amounts will be effective on January 1st of every year unless, based on the proposed FMRs, it appears that one or more of the PHA’s current payment standard amounts will be outside the basic range when the final FMRs are published.

If the PHA has already processed reexaminations that will be effective on or after January 1st, and the effective date of the payment standards is January 1st, the PHA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by the PHA at the time the reexamination was originally processed.

Exception Payment Standards [982.503(c)]

The PHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Unit-by-Unit Exceptions [24 CFR 982.503(c) (2) (ii)]

Unit-by-unit exceptions to the PHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect the PHA's payment standard schedule.

When needed as a reasonable accommodation, the PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [HCV GB 7-9]. The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount falls above 120 percent of the FMR.

TDHCA Policy

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, the PHA must determine that:

There is a shortage of affordable units that would be appropriate for the family;

The family's Total Tenant Payment (TTP) would otherwise exceed 40 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 PHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the PHA to set its payment standards at 90-110 percent of a higher FMR (the 50th, rather than the 40th percentile FMR). To support the request, the PHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- The PHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The PHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the PHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the PHA's jurisdiction within the FMR area.

Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(d)]

The PHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the

basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

UTILITY ALLOWANCES [24 CFR 982.517]

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. The PHA must maintain an updated utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service are stated separately by unit size and type. Chapter 16 of the HCV Guidebook provides detailed guidance to the PHA about establishing utility allowance schedules.

TDHCA Policy

The Department may outsource the preparation of utility allowances to a qualified provider. In addition, TDHCA will use the lesser of the size of dwelling unit actually leased by the family or the voucher size issued, as determined under the TDHCA subsidy standards (unless the size of the dwelling unit is larger because of a reasonable accommodation, in which case TDHCA will use the utility allowance for the larger unit size.)

Air Conditioning

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

TDHCA Policy

The Department has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before the Department will apply this allowance to a family's rent and subsidy calculations.

Reasonable Accommodation

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation for a larger unit size, it will use the utility allow for the size of the dwelling unit actually used by the family.

Utility Allowance Revisions

The PHA must review its schedule of utility allowances at least every 12 months, 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 PHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

PART III: INFORMAL REVIEWS AND HEARINGS

OVERVIEW

When the PHA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

PHAs are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

Decisions Subject to Informal Review

The PHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the PHA waiting list;
- Denying or withdrawing a voucher;
- Refusing to enter into a HAP contract or approve a lease; and
- Refusing to process or provide assistance under portability procedures.

Informal reviews are not required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the PHA;
- General policy issues or class grievances;
- A determination of the family unit size under the PHA subsidy standards;
- A PHA determination not to grant approval of the tenancy;
- A PHA determination that the unit is not in compliance with the HQS; and
- A PHA determination that the unit is not in accordance with the HQS due to family size or composition.

TDHCA Policy

The Department will only offer an informal review to applicants for whom assistance has been denied. Denial of assistance includes Department’s refusal to include applicant on waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; or refusing to process or provide assistance under portability procedures.

Notice to the Applicant [24 CFR 982.554(a)]

The PHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the PHA decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

Scheduling an Informal Review

TDHCA Policy

A request for an informal review must be made in writing and delivered to the Department, either in person or by mail, by the close of the business day, no later than 10 business days from the date of the Department's denial of assistance.

The Department 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)]

A person other than the one who made or approved the decision under review, or a subordinate of this person must conduct the informal review.

The applicant must be provided an opportunity to present written or oral objections to the decision of the PHA.

The person conducting the review will make a recommendation to the PHA, but the PHA is responsible for making the final decision as to whether assistance should be granted or denied.

Informal Review Decision [24 CFR 982.554(b)]

The PHA must notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

TDHCA Policy

In rendering a decision, the Department will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice.

The validity of grounds for denial of assistance. If the grounds for denial are not specified in federal law, the regulations or this plan, then the decision to deny assistance will be overturned.

The validity of the evidence. The Department will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and HUD requires the denial, the Department will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, the Department will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The Department will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555, PUB.L. 109-162]

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the PHA's HCV

program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

The PHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. The PHA will provide a 30-day notice or more prior to termination unless the family has been confirmed as a skip or a deceased person. This shall provide adequate time for the participant to request a hearing and a hearing to be scheduled. Deceased clients with no eligible remaining family member shall have the contract terminated the last day of the month in which the death occurred. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease;
- Terminating housing assistance payments under an outstanding HAP contract; and
- Refusing to process or provide assistance under portability procedures.
- Skipping –defined as a family who moves from the assisted unit without prior appropriate notice to the owner and the approval of the PHA. This must be a written approval or proof of certified mailing if the owner cannot be reach or refusing to sign and the lease is now a month-to-month lease. PHA must also receive this notice and approve by issuances of a voucher prior to the move.

Decisions Subject to Informal Hearing

Circumstances for which the PHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment;
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule;
- A determination of the family unit size under the PHA's subsidy standards;
- A determination 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 PHA's subsidy standards, or the PHA determination to deny the family's request for exception from the standards;
- A determination to terminate assistance for a participant family because of the family's actions or failure to act;
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules; and
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)].

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the PHA;
- General policy issues or class grievances;
- Establishment of the PHA schedule of utility allowances for families in the program;
- A PH2A determination not to approve an extension or suspension of a voucher term;
- A PHA determination not to approve a unit or tenancy;
- A PHA determination that a unit selected by the applicant is not in compliance with the HQS;

- A PHA determination that the unit is not in accordance with HQS because of family size; and
- A determination by the PHA to exercise or not to exercise any right or remedy against an owner under a HAP contract.

TDHCA Policy

The Department will offer participants the opportunity for an informal hearing when required to by the regulations.

INFORMAL HEARING PROCEDURES

Notice to the Family [24 CFR 982.555(c)]

When the PHA makes a decision that is subject to informal hearing procedures, the PHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the PHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the PHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

TDHCA Policy

In cases where the Department makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

The Department's hearing procedures.

The proposed action or decision of the Department.

A brief statement of the reasons for the decision, including the regulatory reference.

The date the proposed action will take place.

A statement of the family's right to an explanation of the basis for the Department's decision.

A statement that if the family does not agree with the decision, the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

Identification of the person to whom the hearing request should be addressed.

Scheduling an Informal Hearing [24 CFR 982.555(d)]

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

TDHCA Policy

The family must submit, in writing, a request for an informal hearing and deliver it to the Department either in person, by mail, or by courier at the close of the business day. The request for an informal hearing must be submitted to the Department no later than 10 business days from the date of the Department's decision or notice to terminate assistance.

The Department must schedule and send written notice to the family for the informal hearing appointment within 10 business days of receipt of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict that seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made in writing prior to the hearing date. At its discretion, the Department may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the Department within 24 hours of the scheduled hearing date, excluding weekends and holidays to request that the Department consider rescheduling the hearing. The Department will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Pre-Hearing Right to Discovery [24 CFR 982.555(e)]

Participants and the PHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at the PHA offices before the hearing, any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, documents include records and regulations.

TDHCA Policy

One copy of documents requested will be provided to the family free of charge. Any fees for copying or procuring subsequent copies of the documents shall be at the expense of the family. at a cost of \$.25 per page. The family must request discovery of Department documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

The Department must be given an opportunity to examine at the Department offices, before the hearing, any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the Department will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]

At its own expense, a lawyer or other representative at the informal hearing may represent the family.

Informal Hearing Officer [24 CFR 982.555(e)(4)] and Attendance at the Informal Hearing

Informal hearings will be conducted by hearing officer identified as the Deputy Executive Director with responsibility for the Community Affairs Programs or her designee.

TDHCA Policy

The Department's structure for conducting an informal hearing consists of a hearing officer (as defined above) and at least two other persons, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision to terminate assistance.

A hearing officer and the following applicable persons may attend hearings:

- A Department representative, Department's counsel, and any witnesses for the Department;
- The participant and any witnesses for the participant;
- The participant's counsel or other representative; and
- Any other person approved by the Department as a reasonable accommodation for a person with a disability.

Conduct at Hearings

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA's hearing procedures [24 CFR 982.555(4)(ii)].

TDHCA 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 PHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

TDHCA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

- Oral evidence: the testimony of witnesses
- Documentary evidence: written documentation relevant to the case includes all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.
- Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.
- Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either the Department or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

Hearing Officer's Decision [24 CFR 982.555(e) (6)]

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family.

TDHCA Policy

In rendering a decision, the hearing officer will consider the following matters:

- **Department Notice to the Family:** The hearing officer will determine if the reasons for the Department's decision are factually stated in the Notice.
- **Discovery:** The hearing officer will determine if the Department and the family were given the opportunity to examine any relevant documents in accordance with Department policy.
- **Department Evidence to Support the Department Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the Department's conclusion.
- **Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and Department policies. If the grounds for termination are not specified in the regulations or in compliance with Department policies, then the decision of the Department will be overturned.

The hearing officer will issue a written decision to the family and the Department no later than 10 business days after the hearing. The report will contain the following information:

- **Hearing information:**
 - Name of the participant;
 - Date, time and place of the hearing;
 - Name of the hearing officer;
 - Name of hearing committee representatives; and
 - Name of family representative (if any).
- **Background:** A brief, impartial statement of the reason for the hearing.
- **Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.
- **Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
- **Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the Department's decision.

- Order: The hearing report will include a statement of whether the Department's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the Department to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the Department to restore the participant's program status.

Procedures for Rehearing or Further Hearing

TDHCA 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 Department will take effect and another hearing will not be granted.

In addition, within 10 business days after the date of the hearing officer's report is presented to the Department and mailed to the participant, the Department or the participant may request a rehearing or a further hearing. Such request must be made in writing and postmarked or hand-delivered to the hearing officer and to the other party within the 10 business day period. The request must demonstrate cause, supported by specific references to the hearing officer's report, why the request should be granted.

A rehearing or a further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known at the time of the hearing.

It shall be within the sole discretion of the Department to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer.

PHA Notice of Final Decision [24 CFR 982.555(f)]

The department is not bound by the decision of the hearing officer for matters in which the Department is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws.

If the Department determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the Department must promptly notify the family of the determination and the reason for the determination.

TDHCA Policy

The Department will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by mail, postage pre-paid with an affidavit of mailing enclosed.

The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof of mailing will be maintained in the Department's file.

HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal

process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for non-citizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for pro-ration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief and the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA upon completion of the USCIS either appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

USCIS Appeal Process [24 CFR 5.514(e)]

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and the proof of mailing.

TDHCA Policy

The Department will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the Department with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

TDHCA Policy

The Department will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial or termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

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 PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

TDHCA Policy

One copy of documents requested will be provided to the family free of charge. Any fees for copying or procuring additional copies of documents shall be at the expense of the family, at a cost of \$.25 per page copy. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf. The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, 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 PHA may, but is not required to provide a transcript of the hearing.

TDHCA Policy

The Department will not provide a transcript of an audio-taped hearing unless requested and only if available.

Hearing Decision

The PHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

Retention of Documents [24 CFR 5.514(h)]

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance;
- The form completed by the family for income reexamination;
- Photocopies of any original documents, including original USCIS documents;
- The signed verification consent form;
- The USCIS verification results;
- The request for an USCIS appeal;
- The final USCIS determination;
- The request for an informal hearing;
- The final informal hearing decision;

PART IV: OWNER OR FAMILY DEBTS TO THE PHA

OVERVIEW

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54]. This part describes the PHA's policies for recovery of monies that have been overpaid on behalf of families, or to owners.

TDHCA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the Department holds the owner or participant liable to return any overpayments to the Department.

The Department will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

REPAYMENT POLICY

Owner Debts to the PHA

TDHCA Policy

The owner must repay any amount due to the Department within 30 business days of the Department determination of the debt.

If the owner fails to repay the debt within the required time-frame and is entitled to future HAP payments, the Department will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments, refuses to repay the debt within the required time-frame, or breaches a repayment agreement, the Department will ban the owner from future participation in the program, may pursue other modes of collection, and/or report to the Inspector General.

Family Debts to the PHA

TDHCA Policy

The family must repay any amount due to the Department. If the family is unable to repay the debt within 30 business days, the Department will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, the Department will terminate the assistance upon notification to the family and may pursue other modes of collection.

Repayment Agreement [24 CFR 792.103]

The term repayment agreement refers to a formal document signed by a tenant or owner and provided to the PHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time-periods. The PHA will not enter into more than one repayment agreement. If the family has not fulfilled their existing repayment agreement, the family will be terminated from the program and the debt will be recorded in EIV.

REPAYMENT AGREEMENT GUIDELINES

Down Payment Requirement

TDHCA Policy

Prior to the execution of a repayment agreement, the owner or family must pay 20 percent of the balance owed to the Department.

Payment Thresholds

TDHCA Policy

The PHA will enter into repayment agreements for amounts not to exceed \$4,000. The PHA will not enter into a repayment agreement for amounts greater than \$4,000 and will terminate the family from the program and recorded in EIV.

Execution of the Agreement

TDHCA Policy

The head of household and spouse/co-head (if applicable) must sign the repayment agreement.

Due Dates

TDHCA Policy

All payments are due by the close of business on the 5th day of the month. If the 5th is not on a business day, the due date is the close of business on the first business day after the 5th.

Non-Payment

TDHCA Policy

If a payment is not received by the end of the business day on the date due, and the Department has not given prior approval for the missed payment, the Department will consider the repayment agreement in default and the PHA will terminate assistance upon written notification. Exceptions may be made to the deadline in extenuating circumstances.

No Offer of Repayment Agreement

TDHCA Policy

The Department will not enter into a repayment agreement if there is already a repayment agreement in place with the family or owner, or the amounts owed by the family or owner is more than the \$4,000 and the amounts exceeds the Federal or Stated threshold for criminal prosecution.

PART V: MANAGEMENT ASSESSMENT (SEMAP)

OVERVIEW

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the PHA in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated “troubled” may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that a PHA’s failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

SEMAP CERTIFICATION [24 CFR 985.101]

PHAs must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by PHA board resolution and signed by the PHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

PHAs with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHAs annually if the PHA elects to have its performance assessed on an annual basis; or is designated as “troubled” [24 CFR 985.105].

Failure of a PHA to submit its SEMAP certification within the required time-frame will result in an overall performance rating of “troubled.”

A PHA’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the PHA’s SEMAP certification, HUD will rate the PHA’s performance under each SEMAP indicator in accordance with program requirements.

HUD Verification Method

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. The PHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify the PHA's certification on the indicator due to the PHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648]

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$750,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

EXHIBIT 16-1: SEMAP INDICATORS
<p>Indicator 1: Selection from the waiting list Maximum Score: 15</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list. • Points are based on the percent of families that are selected from the waiting list in accordance with the PHA's written policies, according to the PHA's quality control sample.
<p>Indicator 2: Rent reasonableness Maximum Score: 20</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units • Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA's quality control sample.
<p>Indicator 3: Determination of adjusted income Maximum Score: 20</p> <ul style="list-style-type: none"> • This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent. • Points are based on the percent of files that are calculated and verified correctly, according to the PHA's quality control sample.
<p>Indicator 4: Utility allowance schedule Maximum Score: 5</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA maintains an up-to-date utility allowance schedule. • Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA's certification.
<p>Indicator 5: HQS quality control inspections Maximum Score: 5</p> <ul style="list-style-type: none"> • This indicator shows whether a PHA supervisor re-inspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS

<p>inspections.</p> <ul style="list-style-type: none"> • Points are based on whether the required quality control re-inspections were completed, according to the PHA's certification.
<p>Indicator 6: HQS enforcement Maximum Score: 10</p> <ul style="list-style-type: none"> • This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, either any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension, or the PHA took appropriate action. • Points are based on whether the PHA took appropriate action when the responsible party failed to correct all HQS deficiencies in accordance with required time-frames, according to the PHA's certification.
<p>Indicator 7: Expanding housing opportunities Maximum Points: 5</p> <ul style="list-style-type: none"> • Only applies to PHAs with jurisdiction in metropolitan FMR areas. • This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration. • Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA's certification.
<p>Indicator 8: FMR limit and payment standards Maximum Points: 5 points</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR. • Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA's certification.
<p>Indicator 9: Annual reexaminations Maximum Points: 10</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months. • Points are based on the percent of reexaminations that are not overdue, according to data from PIC.
<p>Indicator 10: Correct tenant rent calculations Maximum Points: 5</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA correctly calculates the family's share of the rent to owner. • Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.
<p>Indicator 11: Pre-contract HQS inspections Maximum Points: 5</p> <ul style="list-style-type: none"> • 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

<p>effective date of the lease and HAP contract, according to data from PIC.</p>
<p>Indicator 12: Annual HQS inspections Maximum Points: 10</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA inspects each unit under contract at least annually. • Points are based on the percent of annual HQS inspections of units under contract that are not overdue, according to data from PIC.
<p>Indicator 13: Lease-up Maximum Points: 20 points</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA enters into HAP contracts for the number of units or funding reserved under ACC for at least one year. <p>Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by the PHA, according to data from the PHA's last year-end operating statement that is recorded in HUD's accounting system.</p>
<p>Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances Maximum Points: 10</p> <ul style="list-style-type: none"> • Only applies to PHAs with mandatory FSS programs. • This indicator shows whether the PHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income that resulted in escrow account balances. • Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.
<p>. Success Rate of Voucher Holders Maximum Points: 5</p> <ul style="list-style-type: none"> • Only applies to PHAs that have received approval to establish success rate payment standard amounts, and is not effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts. • This indicator shows whether voucher holders were successful in leasing units with voucher assistance. • Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program
<p>Deconcentration Bonus Indicator Maximum Points: 5</p> <ul style="list-style-type: none"> • 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 PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50th percentile. • Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data. • Points are based on whether the data that is submitted meets the requirements for bonus points

PART VI: RECORD KEEPING

OVERVIEW

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

RECORD RETENTION [24 CFR 982.158]

During the term of each assisted lease, and for at least three (3) years thereafter, the PHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the PHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.;
- Accounts and other records supporting PHA budget and financial statements for the program;
- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

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.

The PHA must also keep the last three (3) years of the form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three (3) years from the end of participation (EOP) date.

RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

TDHCA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized Department staff.

Department staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action. Electronic data is kept in compliance with 24 CFR Part 908.

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

Enterprise Income Verification (EIV) Records

PHAs that access EIV data through HUD's EIV System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in Enterprise Income Verification (EIV) System PHA Security Procedures, Version 1.1, issued April 4, 2004.

TDHCA Policy

The Department has implemented EIV security procedures required by HUD.

Criminal Records

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

Medical/Disability Records

PHAs are not permitted to inquire about the nature or extent of a person's disability unless needed to qualify for a voucher that is based on having a qualifying disability or as needed to evaluate the need for a reasonable accommodation. The PHA may not inquire details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file or mark thru with a black marker and photocopy. The PHA should destroy the document.

PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

OVERVIEW

The PHA 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 PHA is subject to reliable.

REPORTING REQUIREMENT [24 CFR 35.1225(e)]

The PHA 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.

TDHCA Policy

The Department will provide the local public health department with written notice of the name and address of any child identified as having an environmental intervention blood lead level.

DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]

At least quarterly, the PHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If the PHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the PHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the PHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the PHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

TDHCA Policy

The Department will provide an updated list of the addresses of units receiving assistance under the HCV program to the Department of State and Health Services, Child Lead Poisoning Prevention Program on a quarterly basis.

Determination of Insufficient Funding

The HCV regulations allows PHA to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.314(e)(1) and 982.454]. Insufficient funding may also impact the PHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the PHA will use to determine whether or not the PHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

Methodology

The PHA will determine where there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing the PHAs budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date.

CHAPTER 17: PROJECT-BASED VASH (PBV)

INTRODUCTION

PROJECT-BASED VASH (PBV)

Since Fiscal Year (FY) 2008, Housing Choice Voucher program funding has provided rental assistance under a supportive housing program for homeless veterans authorized by Title 42, Chapter 8, Subchapter I, § 1437f(o)(19) of the United States Housing Act of 1937. The initiative, known as the HUD-VASH program, was initially authorized by the Consolidated Appropriations Act, 2008. Each annual HUD appropriation since 2008 has continued to authorize this program.

In addition, HUD has periodically made set-aside funding available for project-based HUD VASH vouchers (PBV). Applications for HUD's PBV set-aside funding are released to the public as federal appropriations allow.

The PBV program will result in a de-concentration of poverty and an expansion of housing and economic opportunities. The standards comply with the policy goals, civil rights requirements, and housing quality standards found in 24 CFR § 983.57(b) and other provisions of the Code of Federal Regulations, as well as other guidance from the Department of Housing and Urban Development. The Department will not select a site until it "has determined that PBV assistance for housing at the selected site is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities."

The Department Project-Based VASH program is subject to all applicable requirements of the Department's most current Administrative Plan, including the requirements detailed below. Current HUD guidance provides two methods for PBV proposal selections: (1) issue a request for proposals, or (2) select a proposal based on a previous competition under a federal, state, or local government housing assistance, community development, or supportive services program [24 CFR 983.51].

If the Department utilizes method 1, The Department will provide broad public notice of the opportunity to offer PBV proposals for consideration. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the request for PBV proposals must specify the submission deadline. Detailed application and selection information will be provided at the request of interested parties [24 CFR 983.51].

If the PHA utilizes method 2, the PHA will select an eligible proposal for housing assisted under a federal, state, or local government housing assistance, community development, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance [24 CFR 983.51(b)].

The Department may directly contact specific owners that have already been selected for federal, state or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

TDHCA Policy

The Department will pursue vouchers when possible and if available, will pursue Option 2 for selection methods.

PBV SITE SELECTION

The Department will select sites according to guidance contained within 24 CFR 983.57. Any PBV proposal will only be considered by The Department if the proposed site is consistent with the goal of de-

concentrating poverty and expanding housing and economic opportunities. Any PBV proposal and associated project site must be consistent with 24 CFR 903 and this Administrative Plan. The Department will assess the viability of a PBV proposal/site selection according to:

- Owner experience and capability to build or rehabilitate housing as identified in the proposal;
- Extent to which the project furthers The Department's goal of de-concentrating poverty and expanding housing and economic opportunities;
- The extent to which services are provided on-site or in the immediate area for occupants of the property.

25 PERCENT CAP ON NUMBER OF PBV UNITS PER BUILDING

Exceptions to the 25 percent cap will be granted only if the units are excepted units in a multifamily building specifically made available for elderly or disabled families or families (qualifying families) receiving supportive services, per guidelines contained within 24 CFR 983.56.

The Department staff will conduct annual on-site monitoring visits to assess and measure compliance with supportive services requirements.

PBV WAIT LIST

Applicants who will occupy units with PBV assistance must be selected from either the Department VASH (voucher) list, or the PBV (project-based voucher) list. The Department will work closely with the PBV owner to ensure applicants are placed on the appropriate wait list (or both wait lists).

OWNER SELECTION (SCREENING) OF TENANTS

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing conditions for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

ANNUAL PLAN AMENDMENT CERTIFICATION

This amendment is in compliance with 24 CFR 903.7(r)(2)(ii) and 24 CFR 903.21. The inclusion of PBV in the Department's Annual Plan does not alter the overall mission of the PHA, but may alter the applicant served.

PROJECTED PBV UNITS

The Department will limit PBV units to 75 per property location in areas where significant need is demonstrated.

METHODOLOGY

TDHCA Policy

The PHA 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 PHA'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 PHA 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 PHA cannot support the cost of the proposed subsidy commitment, (voucher issuance or move) based on the funding analysis, the PHA will be considered to have insufficient funding.

GLOSSARY

A. ACRONYMS USED IN SUBSIDIZED HOUSING

AAF	Annual Adjustment Factor. A factor published by HUD in the Federal Register which is used to compute annual rent adjustment.
ACC	Annual Contributions Contract
BR	Bedroom
CDBG	Community Development Block Grant
CFR	Code of Federal Regulations. Commonly referred to as "the regulations". The CFR is the compilation of Federal rules which are first published in the Federal Register and define and implement a statute.
ELI	Extremely low income
FHA	Federal Housing Administration
FMR	Fair Market Rent
FY	Fiscal Year
FYE	Fiscal Year End
GAO	Government Accounting Office
GFC	Gross Family Contribution. Note: Has been replaced by the term Total Tenant Payment (TTP).
GR	Gross Rent
HAP	Housing Assistance Payment
HCV	Housing Choice Voucher
HQS	Housing Quality Standards
HUD	The Department of Housing and Urban Development or its designee.
HURRA	Housing and Urban/Rural Recovery Act of 1983; resulted in most of the 1984 HUD regulation changes to definition of income, allowances, rent calculations
IG	Inspector General
IGR	Independent Group Residence
IPA	Independent Public Accountant
IRA	Individual Retirement Account
LO	Local Operator
MSA	Metropolitan Statistical Area established by the U.S. Census Bureau
PHA	Public Housing Agency
PMSA	A Primary Metropolitan Statistical Area established by the U.S. Census Bureau
PS	Payment Standard
QC	Quality Control
RC	Regional Coordinator
RFAT	Request for Approval of Tenancy

RFP	Request for Proposals
RRP	Rental Rehabilitation Program
RTA	Request for Tenancy Approval
SRO	Single Room Occupancy
SSMA	Standard Statistical Metropolitan Area. Has been replaced by MSA, Metropolitan Statistical Area.
TDHCA	Texas Department of Housing and Community Affairs
TR	Tenant Rent
TTP	Total Tenant Payment
UA	Utility Allowance
URP	Utility Reimbursement Payment

B. GLOSSARY OF TERMS IN SUBSIDIZED HOUSING

1937 ACT. The United States Housing Act of 1937 (42 U.S.C. §1437 et seq.)

ADMINISTRATIVE PLAN. The HUD required written policy of the PHA governing its administration of the Section 8 tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA's board and a copy submitted to HUD as a supporting document to the PHA Plan.

ABSORPTION. In portability, the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

ACC RESERVE ACCOUNT (FORMERLY "PROJECT RESERVE"). Account established by HUD from amounts by which the maximum payment to the PHA under the consolidated ACC (during a PHA fiscal year) exceeds the amount actually approved and paid. This account is used as the source of additional payments for the program.

ADA. Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)

ADJUSTED INCOME. Annual income, less allowable HUD deductions.

ADMINISTRATIVE FEE. Fee paid by HUD to the PHA for administration of the program.

ADMINISTRATIVE FEE RESERVE (Formerly "Operating reserve"). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes.

ADMISSION. The effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program. This is the point when the family becomes a participant in the program.

ANNUAL BUDGET AUTHORITY. The maximum annual payment by HUD to a PHA for a funding increment.

ANNUAL CONTRIBUTIONS CONTRACT (ACC). A written contract between HUD and a PHA. Under the contract HUD agrees to provide funding for operation of the program, and the PHA agrees to comply with HUD requirements for the program

ANNUAL INCOME. The anticipated total Annual Income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

ANNUAL INCOME AFTER ALLOWANCES. The Annual Income (described above) less the HUD-approved allowances.

APPLICANT. (or applicant family). A family that has applied for admission to a program, but is not yet a participant in the program.

"AS-PAID" STATES. States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

ASSETS. (See Net Family Assets.)

ASSISTED TENANT. A tenant who pays less than the market rent as defined in the regulations. Includes tenants receiving rent supplement, Rental Assistance Payments, or Section 8 assistance and all other 236 and 221 (d)(3) BMIR tenants, except those paying the 236 market rent or 120% of the BMIR rent, respectively.

BIFURCATE. To divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain in tact.

BUDGET AUTHORITY. An amount authorized and appropriated by the Congress for payment to PHAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

CERTIFICATE. A Certificate issued by the PHA under the Section 8 pre-merger certificate program, declaring a family to be eligible for participation in this program and stating the terms and conditions for such participation. Will no longer be issued after October 1, 1999.

CERTIFICATE PROGRAM. Pre-merger rental certificate program.

CHILD CARE EXPENSES. Amounts paid by the family for the care of minors under 13 years of age where such care is necessary to enable a family member to be employed or for a household member to further his/her education.

CO-HEAD. An individual in the household who is equally responsible for the lease with the Head of Household. (A family never has a Co-head and a Spouse and; a Co-head is never a Dependent).

COMMON SPACE. In shared housing: Space available for use by the assisted family and other occupants of the unit.

CONGREGATE HOUSING. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing.

CONSOLIDATED ANNUAL CONTRIBUTIONS CONTRACT. (Consolidated ACC). See 24 CFR 982.151.

CONTIGUOUS MSA. In portability, an MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

CONTINUOUSLY ASSISTED. An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

CONTRACT. (See Housing Assistance Payments Contract.)

COOPERATIVE. (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type: See 24 CFR 982.619.

COVERED FAMILIES. Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

DATING VIOLENCE. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

DEPARTMENT. Also referred to as the Texas Department of Housing and Community Affairs.

DEPENDENT. A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or is a full-time student 18 years of age or over.

DISABILITY ASSISTANCE EXPENSE. Anticipated costs for care attendants and auxiliary apparatus for disabled family members which enable a family member (including the disabled family member) to work.

DISABLED FAMILY. A family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

DISABLED PERSON. See Person with Disabilities.

DISPLACED PERSON/FAMILY. A person or family displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under federal disaster relief laws.

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

DOMICILE. The legal residence of the household head or spouse as determined in accordance with State and local law.

DRUG-RELATED CRIMINAL ACTIVITY. The illegal manufacture, sale, distribution, use, or the possession with intent to manufacture, sell distribute or use, of a controlled substance (as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802).

DRUG TRAFFICKING. The illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

ECONOMIC SELF-SUFFICIENCY PROGRAM. Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare,

financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). Also see 24 CFR 5.603 (c).

ELDERLY FAMILY. A family whose head, spouse, or sole member is a person who is at least 62 years of age; or two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

ELDERLY HOUSEHOLD. A family whose head or spouse or whose sole member is at least 62 years of age; may include two or more elderly persons living together or one or more such persons living with another person who is determined to be essential to his/her care and wellbeing.

ELDERLY PERSON. A person who is at least 62 years old.

ELIGIBILITY INCOME. May 10, 1984, regulations deleted Eligibility Income, per se, because Annual Income is now for eligibility determination to compare to income limits.

ELIGIBLE FAMILY (Family). A family is defined by the PHA in the administrative Plan, which is approved by HUD.

EXCEPTIONAL MEDICAL OR OTHER EXPENSES. Prior to the regulation change in 1982, this meant medical and/or unusual expenses as defined in Part 889 which exceeded 25% of the Annual Income. It is no longer used.

EXCEPTION RENT. In the pre-merger certificate program, an initial rent (contract rent plus any utility allowance) in excess of the published FMR. See FMR/Exception rent.

EXCESS MEDICAL EXPENSES. Any medical expenses incurred by elderly or disabled families only in excess of 3% of Annual Income which are not reimbursable from any other source.

EXTREMELY LOW-INCOME FAMILY. A family whose incomes do not exceed the higher of the federal poverty level or 30 percent of the area median income, as determined by HUD, with adjustments for smaller and larger families.

FAIR HOUSING ACT. Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 et seq.)

FAIR MARKET RENT (FMR). The rent including the cost of utilities (except telephone) that would be required to be paid in the housing market area to obtain privately owned existing decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. Fair market rents for existing housing are established by HUD for housing units of varying sizes (number of bedrooms) and are published in the Federal Register.

FAMILY. (Also see Participant and Tenant) "Family" includes but is not limited to:

A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);

An elderly family;

A near-elderly family;

A displaced family

The remaining member of a tenant family; and

A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family. ("Family" can be further defined by the PHA).

FAMILY OF VETERAN OR SERVICE PERSON. A family is a "family of veteran or service person" when:

The veteran or service person (a) is either the head of household or is related to the head of the household; or (b) is deceased and was related to the head of the household, and was a family member at the time of death.

The veteran or service person, unless deceased, is living with the family or is only temporarily absent unless s/he was (a) formerly the head of the household and is permanently absent because of hospitalization, separation, or desertion, or is divorced; provided, the family contains one or more persons for whose support s/he is legally responsible and the spouse has not remarried; or (b) not the head of the household but is permanently hospitalized; provided, that s/he was a family member at the time of hospitalization and there remain in the family at least two related persons.

FAMILY RENT TO OWNER. In the voucher program, the portion of the rent to owner paid by the family.

FAMILY SELF-SUFFICIENCY PROGRAM (FSS PROGRAM). The program established by a PHA to promote self-sufficiency of assisted families, including the provision of supportive services.

FAMILY SHARE. The amount calculated by subtracting the housing assistance payment from the gross rent.

FAMILY UNIT SIZE. The appropriate number of bedrooms for a family, as determined by the PHA under the PHA's subsidy standards.

FMR/EXCEPTION RENT. The fair market rent published by HUD headquarters. In the pre-merger certificate program the initial contract rent for a dwelling unit plus any utility allowance could not exceed the FMR/exception rent limit (for the dwelling unit or for the family unit size). In the voucher program the PHA adopts a payment standard schedule that is within 90% to 110% of the FMR for each bedroom size.

FOSTER CHILD CARE PAYMENT. Payment to eligible households by state, local, or private agencies appointed by the State, to administer payments for the care of foster children.

FULL-TIME STUDENT. A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended).

FUNDING INCREMENT. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

GROSS FAMILY CONTRIBUTION. Changed to Total Tenant Payment.

GROSS RENT. The sum of the Rent to Owner and the utility allowance. If there is no utility allowance, Rent to Owner equals Gross Rent.

GROUP HOME. A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide).

HAP CONTRACT. (See Housing Assistance Payments contract.)

HEAD OF HOUSEHOLD. The head of household is the person who assumes legal and financial responsibility for the household and is listed on the application as head.

HOUSING AGENCY. A state, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. ("PHA" and "HA" mean the same thing.)

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. Act in which the U.S. Housing Act of 1937 (sometimes referred to as the Act) was recodified, and which added the Section 8 Programs.

HOUSING ASSISTANCE PAYMENT. The monthly assistance payment by a PHA. The total assistance payment consists of:

A payment to the owner for rent to owner under the family's lease. An additional payment to the family if the total assistance payment exceeds the rent to owner. The additional payment is called a "utility reimbursement" payment.

HOUSING ASSISTANCE PAYMENTS CONTRACT. (HAP contract). A written contract between a PHA and an owner in the form prescribed by HUD headquarters, in which the PHA agrees to make housing assistance payments to the owner on behalf of an eligible family.

HOUSING ASSISTANCE PLAN. (1) A Housing Assistance Plan submitted by a local government participating in the Community Development Block Program as part of the block grant application, in accordance with the requirements of 570.303(c) submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD. (2) A Housing Assistance Plan meeting the requirements of 570.303(c) submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD.

HOUSING CHOICE VOUCHER PROGRAM (HCV). (See Section 8)

HOUSING QUALITY STANDARDS (HQS). The HUD minimum quality standards for housing assisted under the tenant-based programs.

HUD. The Department of Housing and Urban Development.

HUD REQUIREMENTS. HUD requirements for the Section 8 programs. HUD requirements are issued by HUD headquarters as regulations. Federal Register notices or other binding program directives.

IMMEDIATE FAMILY MEMBER. A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or any other person living in the household of that person and related to that person by blood or marriage.

IMPUTED ASSET. Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

IMPUTED INCOME. HUD passbook rate x total cash value of assets. Calculation used when assets exceed \$5,000.

IMPUTED WELFARE INCOME. An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family's annual income and therefore reflected in the family's rental contribution.

INCOME. Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

INCOME FOR ELIGIBILITY. Annual Income.

INDIAN. Any person recognized as an Indian or Alaska native by an Indian tribe, the federal government, or any State. **INDIAN HOUSING AUTHORITY (IHA).** A housing agency established either by exercise of the power of self-government of an Indian Tribe, independent of State law, or by operation of State law providing specifically for housing authorities for Indians.

INITIAL PHA. In portability, the term refers to both:

A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and

A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

INITIAL PAYMENT STANDARD. The payment standard at the beginning of the HAP contract term.

INITIAL RENT TO OWNER. The rent to owner at the beginning of the HAP contract term.

INTEREST REDUCTION SUBSIDIES. The monthly payments or discounts made by HUD to reduce the debt service payments and, hence, rents required on Section 236 and 221 (d)(3) BMIR projects. Includes monthly interest reduction payments made to mortgagees of Section 236 projects and front-end loan discounts paid on BMIR projects.

JURISDICTION. The area in which the PHA has authority under State and local law to administer the program.

LANDLORD. This term means either the owner of the property or his/her representative or the managing agent or his/her representative, as shall be designated by the owner.

LARGE VERY LOW INCOME FAMILY. Prior to the 1982 regulations, this meant a very low income family which included six or more minors. This term is no longer used.

LEASE. A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA. In cooperative housing, a written agreement between a cooperative and a member of the cooperative. The agreement establishes the conditions for occupancy of the member's family with housing assistance payments to the cooperative under a HAP contract between the cooperative and the PHA.

LEASE ADDENDUM. For pre-merger Certificate, pre-merger OFTO, and pre-merger Voucher tenancies, the lease language required by HUD in the lease between the tenant and the owner.

LIVE-IN AIDE. A person who resides with an elderly person or disabled person and who is determined to be essential to the care and well-being of the person, is not obligated for the support of the person, and would not be living in the unit except to provide necessary supportive services.

LOCAL PREFERENCE. A preference used by the PHA to select among applicant families.

LOCAL OPERATOR. The Local Operator is a separate agency with which the Department contracts to assist with administration of the HCV Program on a local level.

LOCAL OPERATOR REPRESENTATIVE. The Local Operator representative works as an agent of the said agency to administer the Section 8 HCV program locally in the cities and/or areas covered under the Department's HCV Program.

LOW-INCOME FAMILY. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 80% for areas with unusually high or low income families.

MANUFACTURED HOME. A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type. See 24 CFR 982.620 and 982.621.

MANUFACTURED HOME SPACE. In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See 24 CFR 982.622 to 982.624

MARKET RENT. The rent HUD authorizes the owner of FHA insured/subsidized multi-family housing to collect from families ineligible for assistance. For unsubsidized units in an FHA-insured multi-family project in which a portion of the total units receive project-based rental assistance, under the Rental Supplement or Section 202/Section 8 Programs, the Market Rate Rent is that rent approved by HUD and is the Contract Rent for a Section 8 Certificate holder. For BMIR units, Market Rent varies by whether the project is a rental or cooperative.

MEDICAL EXPENSES. Those total medical expenses, including medical insurance premiums that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance. (A deduction for elderly or disabled families only.) These allowances are given when calculating adjusted income for medical expenses in excess of 3% of Annual Income.

MERGER DATE. October 1, 1999.

MINOR. A member of the family household (excluding foster children) other than the family head or spouse who is under 18 years of age.

MIXED FAMILY. A family with citizens and eligible immigration status and without citizens and eligible immigration status as defined in 24 CFR 5.504(b)(3)

MONTHLY ADJUSTED INCOME. 1/12 of the Annual Income after Allowances or Adjusted Income.

MONTHLY INCOME. 1/12 of the Annual Income.

MUTUAL HOUSING. Included in the definition of COOPERATIVE.

NATIONAL. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

NEAR-ELDERLY FAMILY. A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.

NEGATIVE RENT. Now called Utility Reimbursement. A negative Tenant Rent results in a Utility Reimbursement Payment (URP).

NET FAMILY ASSETS. Value of equity in savings, checking, IRA and Keogh accounts, real property, stocks, bonds, and other forms of capital investment. The value of necessary items of personal property such as furniture and automobiles is excluded from the definition.

NET FAMILY CONTRIBUTION. Former name for Tenant Rent.

NON-CITIZEN. A person who is neither a citizen nor a national of the United States.

OCCUPANCY STANDARDS. [Now referred to as Subsidy Standards] Standards established by a PHA to determine the appropriate number of bedrooms for families of different sizes and compositions.

OVER-FMR TENANCY (OFTO). In the pre-merger Certificate program: A tenancy for which the initial gross rent exceeds the FMR/exception rent limit.

OWNER. Any persons or entity having the legal right to lease or sublease a unit to a participant.

PARTICIPANT. (Also see "Family" and "Tenant") A family that has been admitted to the PHA's program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (First day of initial lease term).

PAYMENT STANDARD. The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

PERSON WITH DISABILITIES. A person who has a disability as defined in 42 U.S.C 423 or a developmental disability as defined in 42 U.S.C. 6001. Also includes a person who is determined, under HUD regulations, to have a physical or mental impairment that is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. For purposes of reasonable accommodation and program accessibility for persons with disabilities, means an "individual with handicaps" as defined in 24 CFR 8.3. Definition does not exclude persons who have AIDS or conditions arising from AIDS, but does not include a person whose disability is based solely on drug or alcohol dependence (for low-income housing eligibility purposes).

PHA PLAN. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD in accordance with part 903 of this chapter.

PORTABILITY. Renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the initial PHA.

PREMISES. The building or complex in which the dwelling unit is located, including common areas and grounds.

PRIVATE SPACE. In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

PROCESSING ENTITY. Entity responsible for making eligibility determinations and for income reexaminations. In the Section 8 Program, the "processing entity" is the "responsible entity."

PROGRAM. The Section 8 tenant-based assistance program under 24 CFR Part 982.

PROGRAM RECEIPTS. HUD payments to the PHA under the consolidated ACC, and any other amounts received by the PHA in connection with the program.

PUBLIC ASSISTANCE. Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by Federal, state, or local governments.

PUBLIC HOUSING AGENCY (PHA). PHA includes any State, county, municipality or other governmental entity or public body which is authorized to administer the program (or an agency or instrumentality of such an entity), or any of the following:

A consortia of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortia members):

Any other public or private non-profit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or a PHA) on October 21, 1998; or

For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

REASONABLE RENT. A rent to owner that is not more than rent charged for comparable units in the private unassisted market, and not more than the rent charged for comparable unassisted units in the premises.

RECEIVING PHA. In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

RECERTIFICATION. Sometimes called reexamination. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported. There are annual and interim recertifications.

REGULAR TENANCY. In the pre-merger certificate program: A tenancy other than an over-FMR tenancy.

REMAINING MEMBER OF TENANT FAMILY. Person left in assisted housing after other family members have left and become unassisted.

RENT TO OWNER. The total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

RESIDENCY PREFERENCE. A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

RESIDENCY PREFERENCE AREA. The specified area where families must reside to qualify for a residency preference.

RESIDENT ASSISTANT. A person who lives in an Independent Group Residence and provides on a daily basis some or all of the necessary services to elderly, handicapped, and disabled individuals receiving Section 8 housing assistance and who is essential to these individuals' care or wellbeing. A Resident Assistant shall not be related by blood, marriage or operation of law to individuals receiving Section 8 assistance nor contribute to a portion of his/her income or resources towards the expenses of these individuals.

RESPONSIBLE ENTITY. For the public housing and Section 8 tenant-based assistance, project-based certificate assistance and moderate rehabilitation program, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

SECRETARY. The Secretary of Housing and Urban Development.

SECTION 8. Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

SECURITY DEPOSIT. A dollar amount which can be applied to unpaid rent, damages or other amounts to the owner under the lease.

SERVICE PERSON. A person in the active military or naval service (including the active reserve) of the United States.

SHARED HOUSING. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type.

SINGLE PERSON. A person living alone or intending to live alone.

SPECIAL ADMISSION. Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

SPECIAL HOUSING TYPES. See Subpart M of 24 CFR 982, which states the special regulatory requirements for SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

SPECIFIED WELFARE BENEFIT REDUCTION. Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

SPOUSE. The husband or wife of the head of the household.

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

SUBSIDIZED PROJECT. A multi-family housing project (with the exception of a project owned by a cooperative housing mortgage corporation or association) which receives the benefit of subsidy in the form of:

Below-market interest rates pursuant to Section 221(d)(3) and (5) or interest reduction payments pursuant to Section 236 of the National Housing Act; or

Rent supplement payments under Section 101 of the Housing and Urban Development Act of 1965; or

Direct loans pursuant to Section 202 of the Housing Act of 1959; or

Payments under the Section 23 Housing Assistance Payments Program pursuant to Section 23 of the United States Housing Act of 1937 prior to amendment by the Housing and Community Development Act of 1974;

Payments under the Section 8 Housing Assistance Payments Program pursuant to Section 8 of the United States Housing Act after amendment by the Housing and Community Development Act unless the project is owned by a Public Housing Agency;

A Public Housing Project.

SUBSIDY STANDARDS. Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

SUBSTANDARD UNIT. Substandard housing is defined by HUD for use as a federal preference.

SUSPENSION/TOLLING. Stopping the clock on the term of a family's voucher, for such period as determined by the PHA, from the time when the family submits a request for PHA approval to lease a unit, until the time when the PHA approves or denies the request. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension.

TENANCY ADDENDUM. For the Housing Choice Voucher Program, the lease language required by HUD in the lease between the tenant and the owner.

TENANT. (Also see "Family" and "Participant") The person or persons (other than a live-in-aide) who executes the lease as lessee of the dwelling unit.

TENANT RENT. The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). For a tenancy in the pre-merger certificate program, tenant rent equals the total tenant payment minus any utility allowance.

TOTAL TENANT PAYMENT (TTP). The total amount the HUD rent formula requires the tenant to pay toward gross rent and utility allowance.

UNIT. Residential space for the private use of a family.

UNUSUAL EXPENSES. Prior to the change in the 1982 regulations, this was the term applied to the amounts paid by the family for the care of minors under 13 years of age or for the care of disabled or handicapped family household members, but only where such care was necessary to enable a family member to be gainfully employed.

UTILITIES. Utilities mean water, electricity, gas, other heating, and refrigeration, cooking fuels, trash collection and sewage services. Telephone service is not included as a utility.

UTILITY ALLOWANCE. If the cost of utilities (except telephone) including range and refrigerator, and other housing services for an assisted unit is not included in the Contract Rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of a reasonable consumption of such utilities and other services for the unit by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthy living environment.

UTILITY REIMBURSEMENT. In the voucher program, the portion of the housing assistance payment which exceeds the amount of the rent to owner.

UTILITY REIMBURSEMENT PAYMENT. In the pre-merger certificate program, the amount, if any, by which the Utility Allowance for the unit, if applicable, exceeds the Total Tenant Payment for the family occupying the unit.

VACANCY LOSS PAYMENTS. (For pre-merger certificate contracts effective prior to 10/2/95) When a family vacates its unit in violation of its lease, the owner is eligible for 80% of the Contract Rent for a vacancy period of up to one additional month, (beyond the month in which the vacancy occurred) if s/he notifies the PHA as soon as s/he learns of the vacancy, makes an effort to advertise the unit, and does not reject any eligible applicant except for good cause.

VERY LARGE LOWER-INCOME FAMILY. Prior to the change in the 1982 regulations this was described as a lower-income family which included eight or more minors. This term is no longer used.

VERY LOW INCOME FAMILY. A Lower-Income Family whose Annual Income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50% of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the pre-merger certificate and voucher programs.

VETERAN. A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released there from under conditions other than dishonorable.

VIOLENT CRIMINAL ACTIVITY. Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

VOUCHER (rental voucher). A document issued by a PHA to a family selected for admission to the voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states the obligations of the family under the program.

VOUCHER HOLDER. A family holding a voucher with an unexpired term (search time).

VOUCHER PROGRAM. The Section 8 Housing Choice Voucher program.

WAITING LIST. A list of families organized according to HUD regulations and PHA policy that are waiting for subsidy to become available.

WAITING LIST ADMISSION. An admission from the PHA waiting list.

WELFARE ASSISTANCE. Income assistance from Federal or State welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. FOR THE FSS PROGRAM (984.103(b)), "welfare assistance" includes only cash maintenance payments from Federal or State programs designed to meet a family's ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or Social Security.

WELFARE RENT. This concept is used ONLY for pre-merger Certificate tenants who receive welfare assistance on an "AS-PAID" basis. It is not used for the Housing Voucher Program.

If the agency does NOT apply a ratable reduction, this is the maximum a public assistance agency COULD give a family for shelter and utilities, NOT the amount the family is receiving at the time the certification or recertification is being processed.

If the agency applies a ratable reduction, welfare rent is a percentage of the maximum the agency could allow.

WELFARE-TO-WORK (WTW) FAMILIES. Families assisted by a PHA with voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

C. GLOSSARY OF TERMS USED IN THE NONCITIZENS RULE

CHILD. A member of the family other than the family head or spouse who is under 18 years of age.

CITIZEN. A citizen or national of the United States.

EVIDENCE OF CITIZENSHIP OR ELIGIBLE STATUS. The documents which must be submitted to evidence citizenship or eligible immigration status.

HEAD OF HOUSEHOLD. The adult member of the family who is the head of the household for purpose of determining income eligibility and rent.

HUD. Department of Housing and Urban Development.

INS. The U.S. Immigration and Naturalization Service.

MIXED FAMILY. A family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status.

NATIONAL. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

NONCITIZEN. A person who is neither a citizen nor national of the United States.

PHA. A housing authority who operates Public Housing.

RESPONSIBLE ENTITY. The person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status (the PHA).

SECTION 214. Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

SPOUSE. Spouse refers to the marriage partner, either a husband or wife, who is someone you need to divorce in order to dissolve the relationship. It includes the partner in a common-law marriage. It does not cover boyfriends, girlfriends, significant others, or "co-heads." "Co-head" is a term recognized by some HUD programs, but not by public and Indian housing programs.

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
MAY 26, 2016

Presentation, Discussion, and Possible Action on Release of the Draft FFY 2017 Low Income Home Energy Assistance Program (“LIHEAP”) State Plan to be made available for Public Comment and to be announced in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (“Department”) develops and submits a State Plan to the US Department of Health and Human Services (“USHHS”) each year to administer the LIHEAP; and

WHEREAS, the Department has not yet received final grant guidance from USHHS for preparation of the Draft FFY 2017 LIHEAP State Plan (“Plan”), but has prepared the plan for public comment based on existing USHHS guidance;

NOW, therefore, it is hereby

RESOLVED, that the Draft FFY 2017 LIHEAP State Plan, in the form presented to this meeting, is hereby approved to be released for public comment and public hearing, and to be announced in the *Texas Register*;

RESOLVED, that if USHHS releases different guidance after Board approval, the Board authorizes staff to make needed changes to the State Plan, and to change the public hearing dates and the comment period;

RESOLVED, that the Department is currently accepting public comment on the Income Eligibility Rule at 10 TAC 5.19 through June 15, 2016, and if this rulemaking results in changes, the LIHEAP State Plan will be revised to reflect that rule; and

FURTHER RESOLVED, that the final plan with consideration for final grant guidance, public comment and technical corrections made by staff, along with award recommendations to subrecipients is anticipated to be presented to the Board meeting on July 14, 2016.

BACKGROUND

The Department develops and submits to USHHS a LIHEAP Plan each year on or before September 1st. USHHS provides a model plan to guide the format and content. The draft, upon approval by the Board, will be released for public comment and four public hearings will be held around the state. Public hearings provide the opportunity for comment from the public and the subrecipient network. Upon completion of the public hearings and public comment period, staff will modify the Plan, if appropriate, based on public comment. Staff will also include any changes required by federal guidance, although staff anticipates they

will be minimal, if any. Staff anticipates presenting the revised Plan, along with recommendations for subrecipient awards, to the Board for review and final approval on July 14, 2016.

LIHEAP funds, as reflected in the Plan, are utilized in the following three ways:

- The Department allocates at least 75% of the LIHEAP funds to the Comprehensive Energy Assistance Program (“CEAP”) which provides utility assistance to eligible households, including crisis assistance and “Assurance 16” services to reduce home energy needs.
- The Department allocates up to 15% of the LIHEAP funds to the Weatherization Assistance Program (“WAP”). It should be noted that there is generally greater flexibility with LIHEAP weatherization funds than US Department of Energy (“DOE”) weatherization funds, so continuing to allocate some portion of these funds for this activity allows households to receive more comprehensive assistance than were they to be served solely by DOE WAP. Also, these funds allow ongoing weatherization in the state despite historically low DOE WAP funding.
- The Department allocates 10% of LIHEAP funds for Department and subrecipient administration.

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

MODEL PLAN

PUBLIC LAW 97-35, AS AMENDED

FEDERAL FISCAL YEAR 2017

GRANTEE: Texas Department of Housing and Community Affairs

EIN: 17426105429

**ADDRESS: P.O. Box 13941
Austin, Texas 78711-3941**

LIHEAP COORDINATOR: Michael DeYoung

EMAIL: michael.deyoung@tdhca.state.tx.us

TELEPHONE: (512) 475-2125 FAX: (512) 475-3935

CHECK ONE: TRIBE / TRIBAL ORGANIZATION _____ STATE INSULAR AREA _____

**Department of Health and Human Services
Administration for Children and Families
Office of Community Services
Washington, DC 20447**

August 1987, revised 05/92, 02/95, 03/96, 12/98, 11/01

OMB Approval No. 0970-0075

THE PAPERWORK REDUCTION ACT OF 1995 (Pub. L. 104-13)

Use of this model plan is optional. However, the information requested is required in order to receive a Low Income Home Energy Assistance Program (LIHEAP) grant in years in which the grantee is not permitted to file an abbreviated plan. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Assurances

The Texas Department of Housing and Community Affairs agrees to:

(1) use the funds available under this title to--

(A) conduct outreach activities and provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes that pay a high proportion of household income for home energy, consistent with paragraph (5);

(B) intervene in energy crisis situations;

(C) provide low-cost residential weatherization and other cost-effective energy-related home repair; and

(D) plan, develop, and administer the State's program under this title including leveraging programs, and the State agrees not to use such funds for any purposes other than those specified in this title;

(2) make payments under this title only with respect to--

(A) households in which one or more individuals are receiving--

(i) assistance under the State program funded under part A of title IV of the Social Security Act;

(ii) supplemental security income payments under title XVI of the Social Security Act;

(iii) food stamps under the Food Stamp Act of 1977; or

(iv) payments under section 415, 521, 541, or 542 of title 38, United States Code, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; or

(B) households with incomes which do not exceed an amount equal to 150 percent of the poverty level for such State; or

(ii) an amount equal to 60 percent of the State median income;

except that a State may not exclude a household from eligibility in a Federal fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income.

(3) conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this title, and any

similar energy-related assistance available under subtitle B of title VI (relating to community services block grant program) or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(4) coordinate its activities under this title with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program), under the supplemental security income program, under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under the low-income weatherization assistance program under title IV of the Energy Conservation and Production Act, or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(5) provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between the households described in clauses 2(A) and 2(B) of this subsection;

(6) to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of this title, to give special consideration, in the designation of such agencies, to any local public or private nonprofit agency which was receiving Federal funds under any low-income energy assistance program or weatherization program under the Economic Opportunity Act of 1964 or any other provision of law on the day before the date of the enactment of this Act, except that--

(A) the State shall, before giving such special consideration, determine that the agency involved meets program and fiscal requirements established by the State; and

(B) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the State shall give special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the Federal fiscal year preceding the Federal fiscal year for which the determination is made;

(7) if the State chooses to pay home energy suppliers directly, establish procedures to--

(A) notify each participating household of the amount of assistance paid on its behalf;

(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this title;

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions

to assure that no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and

(D) ensure that the provision of vendor payments remains at the option of the State in consultation with local grantees and may be contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households, including providing for agreements between suppliers and individuals eligible for benefits under this Act that seek to reduce home energy costs, minimize the risks of home energy crisis, and encourage regular payments by individuals receiving financial assistance for home energy costs;

(8) provide assurances that--

(A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits under clause (2), and

(B) the State will treat owners and renters equitably under the program assisted under this title;

(9) provide that--

(A) the State may use for planning and administering the use of funds under this title an amount not to exceed 10 percent of the funds payable to such State under this title for a Federal fiscal year; and

(B) the State will pay from non-Federal sources the remaining costs of planning and administering the program assisted under this title and will not use Federal funds for such remaining cost (except for the costs of the activities described in paragraph (16));

(10) provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursement of and accounting for Federal funds paid to the State under this title, including procedures for monitoring the assistance provided under this title, and provide that the State will comply with the provisions of chapter 75 of title 31, United States Code (commonly known as the "Single Audit Act");

(11) permit and cooperate with Federal investigations undertaken in accordance with section 2608;

(12) provide for timely and meaningful public participation in the development of the plan described in subsection (c);

(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) are denied or are not acted upon with reasonable promptness; and

(14) cooperate with the Secretary with respect to data collecting and reporting under section 2610.

(15) beginning in Federal fiscal year 1992, provide, in addition to such services as may be offered by State Departments of Public Welfare at the local level, outreach and intake functions for crisis situations and heating and cooling assistance that is administered by additional State and local governmental entities or community-based organizations (such as community action agencies, area agencies on aging and not-for-profit neighborhood-based organizations), and in States where such organizations do not administer functions as of September 30, 1991, preference in awarding grants or contracts for intake services shall be provided to those agencies that administer the low-income weatherization or energy crisis intervention programs.

(16) use up to 5 percent of such funds, at its option, to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance, including needs assessments, counseling, and assistance with energy vendors, and report to the Secretary concerning the impact of such activities on the number of households served, the level of direct benefits provided to those households, and the number of households that remain unserved.

Certification to the Assurances: As Chief Executive Officer, I agree to comply with the sixteen assurances contained in Title XXVI of the Omnibus Budget Reconciliation Act of 1981, as amended. By signing these assurances, I also agree to abide by the standard assurances on lobbying, debarment and suspension, and a drug-free workplace.

Signature of the Tribal or Board Chairperson or Chief Executive Officer of the State or Territory.

Signature: _____

Title: Executive Director, Texas Department of Housing and Community Affairs

Date: August , 2016

The Governor of Texas has delegated the responsibility of signing this document to the Executive Director of the Texas Department of Housing and Community Affairs. A copy of the letter is attached.

The EIN (Entity Identification Number) of the Texas Department of Housing & Community Affairs, which receives the grant funds, appears on the cover of this application.

In the above assurances which are quoted from the law, "State" means the 50 States, the District of Columbia, an Indian Tribe or Tribal Organization, or a Territory; "title" of the Act refers to Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (OBRA), as amended, the "Low Income Home Energy Assistance Act"; "section" means Section 2605 of OBRA; and, "subsection" refers to Section 2605(b) of OBRA.

Section 1¹

Program Components, 2605(a), 2605(b)(1) – Assurance 1, 2605(c)(1)(C)

1.1 Check which components you will operate under the LIHEAP program. (Note: You must provide information for each component designated here as requested elsewhere in this plan.)

	<u>Dates of Operation²</u>	
<input checked="" type="checkbox"/> Heating assistance	Start date: 01/01/2017	End date: 09/31/2018
<input checked="" type="checkbox"/> Cooling assistance	Start date: 01/01/2017	End date: 09/31/2018
<input checked="" type="checkbox"/> Crisis assistance	Start date: 01/01/2017	End date: 09/31/2018
<input checked="" type="checkbox"/> Weatherization assistance	Start date: 01/01/2017	End date: 09/31/2018

Estimated Funding Allocation, 2604(c), 2605(k)(1), 2605(b)(9), 2605(b)(16) – Assurances 9 and 16

1.2 Estimate what amount of available LIHEAP funds will be used for each component that you will operate: **The total of all percentages must add up to 100%.**

10% heating assistance

40% cooling assistance

25% crisis assistance

Up to 15% weatherization assistance³

0% carryover to the following Federal fiscal year

10% administrative and planning costs

0% services to reduce home energy needs including needs assessment (Assurance 16)

0% used to develop and implement leveraging activities

100% TOTAL

¹ Capitalized terms are defined in Title 10, Chapter 1 or Chapter 5 (as applicable) of the Texas Administrative Code or by federal law.

² Dates of operation signify periods in which we most expect seasonal usage. Identification of these periods does not limit the payment of assistance on any "seasonal" basis.

³ If 15% is not used for weatherization assistance, the balance will be added to heating, cooling, or crisis assistance as needed.

Alternate Use of Crisis Assistance Funds, 2605(c)(1)(C)

1.3 The funds reserved for winter crisis assistance that have not been expended by March 15 will be reprogrammed to:

- Heating assistance
- Weatherization assistance
- Cooling assistance
- Other (specify): other eligible activities

Categorical Eligibility, 2605(b)(2)(A) – Assurance 2, 2605(c)(1)(A), 2605(b)(8A) – Assurance 8

1.4 Do you consider households categorically eligible if one household member receives one of the following categories of benefits in the left column below? Yes No

Program	Cooling	Heating	Crisis	Weatherization
Supplemental Security Income	Yes	Yes	Yes	Yes
Temporary Assistance for Needy Families	No	No	No	No
Supplemental Nutrition Assistance Program	No	No	No	No
Means-tested Veteran’s Programs	Yes	Yes	Yes	Yes

1.5 Do you automatically enroll households without a direct annual application?

- Yes
- No

1.6 How do you ensure there is no difference in the treatment of categorically eligible households from those not receiving other public assistance when determining eligibility and benefit amounts?

FY 2017 is the second year that Texas implemented categorical eligibility for SSI and means-tested Veteran’s Programs into its program. State rules were amended to include a provision that there is to be no difference in the treatment of categorically eligible households. The Department has a system for persons to submit complaints and the monitoring reviews would also note any differences in treatment of persons that are or are not categorically eligible.

SNAP Nominal Payments

1.7 Do you allocate LIHEAP funds toward a nominal payment for SNAP clients? If you answered “yes” to question 1.71 you must provide a response to 1.7b, 1.7c, 1.7d.

- a. Yes No

b. Amount of Nominal Assistance: \$ ___ NA _____

c. Frequency of Assistance:

- Once per year
- Once every five years
- Other (describe): _____ NA _____

d. How do you confirm that the household receiving a nominal payment has an energy cost or need?

Determination of Eligibility – Countable Income

1.8 In determining a household's income eligibility for LIHEAP, do you use gross income or net income?

- Gross Income (except for self employment or farm income or gambling/lottery winnings)
 Net Income

1.9. Select all of the applicable forms of countable income used to determine a household's income eligibility for LIHEAP.

- Wages (except as prohibited by the Workforce Investment Act of 1998)
 Self-employment income
 Contract income
 Payments from mortgage or sales contracts
 Unemployment Insurance
 Strike pay
 Social Security Administration (SSA) benefits
 Including MediCare deduction Excluding MediCare deduction
 Supplemental Security Income (SSI)
 Retirement / pension benefits
 General Assistance benefits (except as excluded by federal law or 10 TAC §5.19)
 Temporary Assistance for Needy Families (TANF) benefits (except for one-time payments)
 Supplemental Nutrition Assistance Program (SNAP) benefits
 Women, Infants, and Children Supplemental Nutrition Program (WIC) benefits
 Loans that need to be repaid
 Cash gifts
 Savings account balance
 One-time lump-sum payments, such as rebates/credits, refund deposits, etc.
 Jury duty compensation
 Rental income
 Income from employment through Workforce Investment Act (WIA)
 Income from work study programs
 Alimony
 Child support
 Interest, dividends, or royalties
 Commissions
 Legal settlements
 Insurance payments made directly to the insured
 Insurance payments made specifically for the repayment of a bill, debt, or estimate
 Veterans Administration (VA) benefits (Some types are included, some types are excluded)
 Earned income of a child under the age of 18
 Balance of retirement, pension, or annuity accounts where funds cannot be withdrawn without a penalty.
 Income tax refunds
 Stipends from senior companion programs, such as VISTA
 Funds received by household for the care of a foster child
 AmeriCorps Program payments for living allowances, earnings, and in-kind aid.
 Reimbursements (for mileage, gas, lodging, meals, etc.)
 Other Any item not excluded in 10 Texas Administration Code §5.19 or by other federal law

Section 2 - HEATING ASSISTANCE

Eligibility, 2605(b)(2) – Assurance 2

2.1 Designate The income eligibility threshold used for the heating component:

2017 or most current HHS poverty income level:

FY 2016 state’s median income 60%⁴

2.2 Do you have additional eligibility requirements for **HEATING ASSISTANCE**?

Yes⁵ No

2.3 Check the appropriate boxes below and describe the policies for each.

- | | Yes | No |
|--|-------------------------------------|-------------------------------------|
| ● Do you require an assets test? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Do you have additional/differing eligibility policies for: | | |
| ● Renters? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters living in subsidized housing? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters with utilities included in the rent? ⁶ | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Do you give priority in eligibility to: | | |
| ● Elderly? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Disabled? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Young children? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Households with high energy burdens? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Other? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Households with high energy consumption | | |

⁴ In the county of a major disaster or emergency designated by the Secretary of the Department of Health and Human Services or by the President under the Disaster Relief Act of 1974, the State will use the highest of 150% of the poverty guidelines or 60% of the State’s median income (“SMI”). The State may also use this flexibility to set poverty guidelines in a local crisis as defined by the Department’s Executive Director. The State will communicate this designation to affected subrecipients through email and by website posting. Subrecipients must receive prior written approval before using 60% SMI. Place based assistance must be performed in the county, but person based assistance for those displaced by a disaster or emergency may be in other counties.

⁵ Currently, §5.407(f) of 10 Texas Administrative states: “Household units where the Subrecipient is unable to determine whether the meter is utilized by another household may not be served without approval from Community Affairs Division staff. A Household cannot be served if the meter is utilized by another Household that is not part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient may provide services if: (1) the members of the separate structures that share a meter meet the definition of a Household per §5.2 of this Chapter; (2) the members of the separate structures that share a meter submit one application as one Household; and (3) all persons and applicable income from each structure are counted when determining eligibility.”

⁶ If the renter’s situation is one where the utilities are not a distinct charge from the rent, we do not provide assistance as there is no individual bill and neither energy cost nor energy burden can be determined.

Determination of Benefits, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)

2.4 Describe how you prioritize the provision of heating assistance to vulnerable households, e.g., benefit amounts, application period, etc.

Subrecipients use a household rating system which determines priority based on persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Households with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Benefit amounts are determined on a sliding scale based on the Household's income. The number of benefit payments is based on the presence of a vulnerable member such as the Elderly, Persons with Disabilities, and Households with Young Children. The maximum benefit amount is determined per-program year based on household need, is split between heating and cooling assistance, and is not required to be applied equally to heating and cooling costs.

2.5 Check the variables you use to determine your benefit levels. (Check all that apply):

- Income
- Family (household) size
- Home energy cost or need:
 - Fuel type
 - Climate/region
 - Individual bill
 - Dwelling type
 - Energy burden (% of income spent on home energy)
 - Energy need
 - Other (Describe)

Benefit Levels, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)

2.6 Describe estimated benefit levels for FY 2017:

\$0 Minimum benefit \$1200 Maximum benefit

2.7 Do you provide in-kind (e.g., blankets, space heaters) and/or other forms of benefits?

Yes No -- If yes, describe.

Under energy crisis, a Household may receive service and repair of existing heating and cooling units not to exceed \$3,000 when Subrecipient has met local weather crisis criteria. Households that include at least one member that is elderly, disabled, or a child age 5 or younger, may receive a portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) when Subrecipient has met local weather crisis criteria. Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation. Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing. When natural disasters result in energy supply shortages or other energy-

related emergencies, LIHEAP will allow home energy related expenditures as described in §5.423 (h) of 10 Texas Administrative Code.

DRAFT

Section 3: COOLING ASSISTANCE

Eligibility, 2605(c)(1)(A), 2605(b)(2) – Assurance 2

3.1 Designate the income eligibility threshold used for the cooling component:

2017 HHS poverty income level

OR

FY 2016 median income 60%⁷

3.2 Do you have additional eligibility requirements for **COOLING ASSISTANCE**

Yes No

3.3 Check the appropriate boxes below and describe the policies for each.

- | | <u>Yes</u> | <u>No</u> |
|--|-------------------------------------|-------------------------------------|
| ● Do you require an assets test? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Do you have additional/differing eligibility policies for: | | |
| ● Renters? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters living in subsidized housing? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters with utilities included in the rent? ⁸ | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Do you give priority in eligibility to: | | |
| ● Elderly? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Disabled? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Young children? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Households with high energy burdens? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Other?
Households with high energy consumption | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

3.4 Describe how you prioritize the provision of cooling assistance to vulnerable households, e.g., benefit amounts, application periods, etc.

Subrecipients use a household rating system which determines priority based on persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High

⁷ In the county of a major disaster or emergency designated by the Secretary of the Department of Health and Human Services or by the President under the Disaster Relief Act of 1974, the State will use the highest of 150% of the poverty guidelines or 60% of the State’s median income. The State may also use this flexibility to set poverty guidelines in a local crisis as defined by the Department’s Executive Director. The State will communicate this designation to affected subrecipients through email and by website posting. Subrecipients must receive prior written approval before using 60% SMI. Place based assistance must be performed in the county, but person based assistance for those displaced by a disaster or emergency may be in other counties.

⁸ If the renter’s situation is one where the utilities are not a distinct charge from the rent, we do not provide assistance as there is no individual bill and neither energy cost nor energy burden can be determined.

Energy Consumption. Benefit amounts are determined on a sliding scale based on the Household's income. The number of benefit payments is based on the presence of a vulnerable member such as the Elderly, Persons with Disabilities, and Households with Young Children. The maximum benefit amount is determined per-program year based on household need, is split between heating and cooling assistance, and is not required to be applied equally to heating and cooling costs.

Determination of Benefits, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)

3.5 Check the variables you use to determine your benefit levels. (Check all that apply):

- Income
- Family (household) size
- Home energy cost or need
 - Fuel type
 - Climate/region
 - Individual bill
 - Dwelling type
 - Energy burden (% of income spent on home energy)
 - Energy need
 - Other (describe)

Benefit Levels, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)

3.6 Describe benefit levels:

\$0 Minimum benefit \$1200 Maximum benefit

3.7 Do you provide in-kind (e.g., fans, air conditioners) and/or other forms of benefits?

Yes No -- If yes, describe.

Under energy crisis, a Household may receive repair of existing heating and cooling units not to exceed \$3,000. Households that include at least one member that is elderly, disabled, or a child age 5 or younger, may receive either repair of existing heating and cooling units or crisis-related purchase of portable heating and cooling units not to exceed \$3,000

Section 4: CRISIS ASSISTANCE,

Eligibility - 2604(c), 2605(c)(1)(A)

4.1 Designate the income eligibility threshold used for the crisis component:

2017 HHS poverty income level

OR

FY 2016 state median income 60%

4.2 Provide your LIHEAP program's definition for determining a crisis.

A bona fide Household crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages or a terrorist attack have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well-being of the Household, particularly the Elderly, Persons with Disabilities, or children age 5 and younger. A utility disconnection notice may constitute a Household energy crisis.

Particularly:

(1) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours, according to the nearest National Weather Service (NWS) reports; or

(2) the NWS issues a heat advisory for any county in the electric utility's service territory, or when such advisory has been issued on any one of the preceding two calendar days.

4.3 What constitutes a life-threatening crisis?

State rules define a life threatening crisis as: "A life threatening crisis exists when at least one person in the applicant household could lose their life without the Subrecipient's utility assistance because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by client report) and any member of the Household is dependent upon equipment that is prescribed by a medical professional, operated on electricity or gas and is necessary to sustain the person's life. Examples of life-sustaining equipment include but are not limited to kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not include information regarding the applicant's medical condition but may include certification that such a device is required in the home to sustain life."

Crisis Requirements, 2604(c)

4.4 Within how many hours do you provide an intervention that will resolve the energy crisis for eligible households? 48 Hours

4.5 Within how many hours do you provide an intervention that will resolve the energy crisis for eligible households in life-threatening situations? 18 Hours⁹

⁹ Pursuant to §2604(c)(2) of the LIHEAP Statute, the Department provides "some form of assistance that will resolve the energy crisis" not later than 18 hours after a household applies for crisis benefits if such household is eligible to receive such benefits and is in a life-threatening situation.

Crisis Eligibility, 2605(c)(1)(A)?

4.6 Do you have additional eligibility requirements for **CRISIS ASSISTANCE**?

Yes No

4.7 Check the appropriate boxes below and describe the policies for each.

	<u>Yes</u>	<u>No</u>
● Do you require an assets test?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
● Do you give priority in eligibility to:		
• Elderly?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Disabled?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Young children?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Households with high energy burdens?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Other? Households with high energy consumption	<input checked="" type="checkbox"/>	<input type="checkbox"/>
● In order to receive crisis assistance: ¹⁰		
• Must the household have received a shut-off notice or have a near empty tank?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Must the household have been shut off or have an empty tank?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Must the household have exhausted their regular heating benefit?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Must renters with heating costs included in their rent have received an eviction notice?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Must heating/cooling be medically necessary?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Must the household have non-working heating or cooling equipment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Other?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
● Do you have additional/differing eligibility policies for:		
• Renters?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Renters living in subsidized housing?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Renters with utilities included in the rent?	<input checked="" type="checkbox"/>	<input type="checkbox"/> ¹¹

Determination of Benefits

4.8 How do you handle crisis situations?

¹⁰ The program has different requirements depending on whether the Household contains a member of a priority group.

¹¹ If the renter's situation is one where the utilities are not a distinct charge from the rent, we do not provide assistance as there is no individual bill and neither energy cost nor energy burden can be determined.

Separate component

Fast Track

Other

4.9 If you have a separate component, how do you determine crisis assistance benefits?

Amount to resolve crisis, up to a maximum of \$1200

Other

Heating and cooling equipment repair or replace up to \$3,000

Crisis Requirements, 2604(c)

4.10 Do you accept applications for energy crisis assistance at sites that are geographically accessible to all households in the area to be served?

Yes No

Explain: According to state program rules: "Subrecipients shall accept applications at sites that are geographically and physically accessible to all Households requesting assistance. If Subrecipient's office is not accessible, Subrecipient shall make reasonable accommodations to ensure that all Households can apply for assistance."

4.11 Do you provide individuals who have physical disabilities the means to:

■ Submit applications for crisis benefits without leaving their homes?

Yes No If no, explain.

Applications can be mailed in. In some cases, applications may be completed online or the organization will go to the applicant's home to take the application.

■ Travel to the sites at which applications for crisis assistance are accepted?

Yes No If yes, explain.

If you answered "No" to both questions 4.11, please explain alternative means of intake to those who are homebound or physically disabled.

Benefit Levels, 2605(c)(1)(B)

4.12 Indicate the maximum benefit for each type of crisis assistance offered.

Winter Crisis \$_____ maximum benefit

Summer Crisis \$_____ maximum benefit

Year-round Crisis \$1200 maximum benefit

4.13 Do you provide in-kind (e.g., blankets, space heaters, fans) and/or other forms of benefits? Yes No If yes, describe.
 Repair of existing heating and cooling units, purchase of portable heating/cooling units, temporary shelter, blankets, fans, generators.

4.14 Do you provide for equipment repair or replacement using crisis funds?
 Yes No

4.15 Check appropriate boxes below to indicate type(s) of assistance provided:

	Winter Crisis	Summer Crisis	Year-round Crisis
Heating system repair			X
Heating system replacement			X
Cooling system repair			X
Cooling system replacement			X
Wood stove purchase			
Pellet stove purchase			
Solar panel(s)			
Windmill(s)			
Utility poles / Gas line hook-ups			
Other (Specify): _____			

4.16 Do any of the utility vendors you work with enforce a winter moratorium on shut offs? If you respond "Yes" to question 4.16, you must respond to question 4.17.
 Yes No

4.17 Describe the terms of the moratorium and any special dispensation received by LIHEAP clients during or after the moratorium period.

Pursuant to §25.483 Disconnection of Service of the Texas Public Utilities Commission rules:
 "An electric utility cannot disconnect a customer anywhere in its service territory on a day when:

- (1) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours, according to the nearest National Weather Service (NWS) reports; or
- (2) the NWS issues a heat advisory for any county in the electric utility's service territory, or when such advisory has been issued on any one of the preceding two calendar days in a county."

Section 5: WEATHERIZATION ASSISTANCE

Eligibility, 2605(c)(1)(A), 2605(b)(2) – Assurance 2

5.1 Designate the income eligibility threshold used for the weatherization component:

2017 HHS poverty income level

OR

FY 2016 state median income 60%¹²

5.2 Do you enter into an interagency agreement to have another government agency administer a **WEATHERIZATION component**? Yes No

5.3 If yes, name the agency. _NA_

5.4 Is there a separate monitoring protocol for weatherization? Yes No

WEATHERIZATION - Types of Rules

5.5 Under what rules do you administer LIHEAP weatherization? (Check only one.)

Entirely under LIHEAP (not DOE) rules

Entirely under DOE WAP (not LIHEAP) rules

Mostly under LIHEAP rules with the following DOE WAP rule(s) where LIHEAP and WAP rules differ: (Check all that apply.)

Income Threshold

Weatherization of entire multi-family housing structure is permitted if at least 66% of units (50% in 2- & 4-unit buildings) are eligible units or will become eligible within 180 days.

Weatherization of shelters temporarily housing primarily low income persons (excluding nursing homes, prisons, and similar institutional care facilities) is permitted.

Other (describe): TDHCA uses a priority list for LIHEAP households at 150% or below HHS poverty income level. Energy-related home repair: TDHCA will allow the use of LIHEAP weatherization funds for structural and ancillary repairs only if required to enable effective weatherization. If LIHEAP funds are

¹² In the county of a major disaster or emergency designated by the Secretary of the Department of Health and Human Services or by the President under the Disaster Relief Act of 1974, the State will use the highest of 150% of the poverty guidelines or 60% of the State's median income. The State may also use this flexibility to set poverty guidelines in a local crisis as defined by the Department's Executive Director. The State will communicate this designation to affected subrecipients through email and by website posting. Subrecipients must receive prior written approval before using 60% SMI. Place based assistance must be performed in the county, but person based assistance for those displaced by a disaster or emergency may be in other counties.

included in a DOE unit, the SIR/audit must be used to justify all measures.

Mostly under DOE WAP rules, with the following LIHEAP rule(s) where LIHEAP and WAP rules differ: (Check all that apply.)

- Income Threshold.
- Weatherization not subject to DOE WAP maximum statewide average cost per dwelling unit.
- Weatherization measures are not subject to DOE Savings to Investment Ratio (SIR) standards.
- Other (describe)

Eligibility, 2605(b)(5) – Assurance 5

- | | <u>Yes</u> | <u>No</u> |
|--|-------------------------------------|-------------------------------------|
| 5.6 Do you require an assets test? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5.7 Do you have additional/differing eligibility policies for: | | |
| • Renters? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Renters living in subsidized housing? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5.8 Do you give priority in eligibility to: | | |
| • Elderly? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Disabled? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Young children? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Households with high energy burdens? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Other? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Households with high energy consumption | | |

Benefit Levels

5.9 Do you have a maximum LIHEAP weatherization benefit/expenditure per household?
 Yes No

5.10 If yes, what is the maximum amount? \$6,500, unless additional expenditure is authorized in writing by the Department.

Types of Assistance, 2605(c)(1), (B) & (D)

5.11 What LIHEAP weatherization measures do you provide? (Check all categories that apply.)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Weatherization needs/assessments/audits | <input checked="" type="checkbox"/> Energy related roof repair |
| <input checked="" type="checkbox"/> Caulking and insulation | <input checked="" type="checkbox"/> Major appliance repairs |
| <input type="checkbox"/> storm windows | <input checked="" type="checkbox"/> Major appliance replacement |
| <input checked="" type="checkbox"/> Furnace/heating system modifications/ Repairs | <input type="checkbox"/> windows/sliding glass doors |
| <input checked="" type="checkbox"/> Furnace replacement | <input type="checkbox"/> Doors |
| <input checked="" type="checkbox"/> Cooling system modifications/repairs | <input checked="" type="checkbox"/> Water Heater |
| <input checked="" type="checkbox"/> Water conservation measures | <input checked="" type="checkbox"/> Cooling system replacement |
| <input checked="" type="checkbox"/> Compact fluorescent light bulbs | <input checked="" type="checkbox"/> Other (describe)
Solar screens or window film. Smart thermostats, miscellaneous repairs up to \$500 for structural and ancillary only if required to enable effective weatherization. |

If any of the questions require further explanation or clarification that could not be made in the fields provided, attach a document with said explanation here.

Section 6: Outreach, 2605(b)(3) – Assurance 3, 2605(c)(3)(A)

6.1 Select all outreach activities that you conduct that are designed to assure that eligible households are made aware of all LIHEAP assistance available:

- Place posters/flyers in local and county social service offices, offices of aging, Social Security offices, VA, etc.
- Publish articles in local newspapers or broadcast media announcements.
- Include inserts in energy vendor billings to inform individuals of the availability of all types of LIHEAP assistance.
- Mass mailing(s) to prior-year LIHEAP recipients.
- Inform low income applicants of the availability of all types of LIHEAP assistance at application intake for other low-income programs.

Execute interagency agreements with other low-income program offices to perform outreach to target groups.

Other (specify):

Section 7: Coordination, 2605(b)(4) – Assurance 4

7.1 Describe how you will ensure that the LIHEAP program is coordinated with other programs available to low-income households (TANF, SSI, WAP, etc.)

- Joint application for multiple programs
- Intake referrals to/from other programs
- One-stop intake centers
- Other – describe:

Section 8: Agency Designation, 2605(b)(6) – Assurance 6

8.1 How would you categorize the primary responsibility of your State agency?

- Administration Agency
- Commerce Agency
- Community Services Agency
- Energy/Environment Agency
- Housing Agency
- Welfare Agency
- Other – describe:

Alternate Outreach and Intake, 2605(b)(15) – Assurance 15

8.2 How do you provide alternate outreach and intake for **HEATING ASSISTANCE**?

Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), presentation at area events organized by state representatives and other service providers.

8.3 How do you provide alternate outreach and intake for **COOLING ASSISTANCE**?

Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), presentation at area events organized by state representatives and other service providers.

8.4 How do you provide alternate outreach and intake for **CRISIS ASSISTANCE**?

In instances of natural disaster, Subrecipient coordinates with other assistance organizations (shelters, Red Cross, etc.). Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), presentation at area events organized by or at the direction or request of elected officials and other service providers.

8.5 LIHEAP Component Administration	<u>Heating</u>	<u>Cooling</u>	<u>Crisis</u>	<u>Weatherization</u>
8.5a. Who determines client eligibility?	Local governments, CAAs and Other Nonprofits	Local governments, CAAs and Other Nonprofits	Local governments, CAAs and Other Nonprofits	Local governments, CAAs and Other Nonprofits
	<u>Heating</u>	<u>Cooling</u>	<u>Crisis</u>	<u>Weatherization</u>
8.5b. Who processes benefit payments to gas and electric vendors?	Local governments, CAAs and Other Nonprofits	Local governments, CAAs and Other Nonprofits	Local governments, CAAs and Other Nonprofits	N/A
8.5c. Who processes benefit payments to bulk fuel vendors?	Local governments, CAAs and Other Nonprofits	Local governments, CAAs and Other Nonprofits	Local governments, CAAs and Other Nonprofits	N/A
8.5d. Who performs installation of weatherization measures?	N/A	N/A	N/A	Local governments, CAAs and Other Nonprofits

8.6 What is your process for selecting local administering agencies?

The Department ensures that to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of Title 42 U.S.C. §§8621, et seq. special consideration is given to any local public or private nonprofit agency which was receiving CSBG or LIHEAP funds.

(1) The Department before giving such special consideration, determines that the agency involved meets program and fiscal requirements established by law and by the Department; and

(2) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the Department gives special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the fiscal year preceding the fiscal year for which the determination is made.

Currently, the Department administers all aspects of program delivery through the existing Subrecipients that have demonstrated that they are operating the program in accordance with the

Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, et seq.), and the Department rules. If Subrecipients are successfully administering the program, the Department may offer to renew the contract.

Under this model, the Department determines that an organization is not administering the program satisfactorily, corrective actions are taken to remedy the problem. Thereafter, if Subrecipient fails to administer the program correctly, the Department will proceed with the process of removing funds and reassign the service area or a portion to another existing Subrecipient or conducts solicitation or selection of a new Subrecipient in accordance with the Low-Income Home Energy Assistance Act of 1981. The affected Subrecipient may request a hearing in accordance with §2105.204 of the Texas Government Code.

However, the Department retains the right to go through a procurement process for some or all aspects of the LIHEAP program.

8.7 How many local administering agencies do you use?

40

8.8 Have you changed any local administering agencies from last year?

Yes No

8.9 If so, why?

Agency was in noncompliance with grantee requirements for LIHEAP

Agency is under criminal investigation

Added agency

Agency closed

Other – describe – voluntary relinquishment of WAP

Section 9: Energy Suppliers, 2605(b)(7) – Assurance 7

9.1 Do you make payments directly to home energy suppliers?

Heating Yes No

Cooling Yes No

Crisis Yes No

Are there exceptions? Yes No

If yes, describe.

9.2 How do you notify the client of the amount of assistance paid?

The administering agency informs them once the determination is made.

9.3 How do you assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment?

Vendor agreements are used in all components. A sample copy is attached with the Program Integrity Assessment Report.

9.4 How do you assure that no household receiving assistance under this title will be treated adversely because of their receipt of LIHEAP assistance?

Vendor agreements are used in all components. A sample copy is attached with the Program Integrity Assessment Report.

9.5 Do you make payments contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households? Yes No. If so, describe the measures unregulated vendors may take.

Section 10: Program, Fiscal Monitoring, and Audit, 2605(b)(10) – Assurance 10

- 10.1. How do you ensure good fiscal accounting and tracking of LIHEAP funds?
1. Review annual audits
 2. Monitor fiscal records
 3. Review current and prior year monthly expenditure and performance reports

Audit Process

10.2. Is your LIHEAP program audited annually under the Single Audit Act and OMB Circular A-133? Yes No

10.3. Describe any audit findings rising to the level of material weakness or reportable condition cited in the A-133 audits, Grantee monitoring assessments, inspector general reviews, or other government agency reviews of the LIHEAP agency from the most recently audited federal fiscal year.

Finding ¹³	Type	Brief Summary	Resolved?	Action Taken

¹³ The Department has a single audit annually, but LIHEAP is not audited as a major program every year. LIHEAP was last audited as a major program in FY 2013 and is scheduled to be audited as a major program in 2016.

10.4. Audits of Local Administering Agencies

What types of annual audit requirements do you have in place for local administering agencies/district offices?

Local agencies/district offices are required to have an annual audit in compliance with 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).¹⁴

Local agencies/district offices are required to have an annual audit (other than 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)).

Local agencies/district offices 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) or other independent audits are reviewed by Grantee as part of compliance process.

Grantee conducts fiscal and program monitoring of local agencies/district offices.

Compliance Monitoring

10.5. Describe the Grantee’s strategies for monitoring compliance with the Grantee’s and Federal LIHEAP policies and procedures by:

Grantee employees:

Internal program review

Departmental oversight

Secondary review of invoices and payments

Other program review mechanisms are in place. Describe: Cross Division peer review of documents

Local Administering Agencies/District Offices:

On-site evaluation

Annual program review

Monitoring through Central Database

Desk reviews

Client File Testing/Sampling

Other program review mechanisms are in place. Describe: Desk review of 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance); A review of the Subrecipient’s resolution of prior monitoring or Single Audit reports is performed prior to awarding new contracts.

10.6. Explain, or attach a copy of, your local agency monitoring schedule and protocol.
See attached monitoring schedule and monitoring instruments.

Describe how you select local agencies for monitoring reviews?

On-site monitoring visits and desk reviews are mechanisms used for in-depth investigation and overall assessment, respectively. The Department will conduct on-site monitoring reviews and desk reviews of contracts based on an assessment of risk of non-compliance and failure to achieve performance

¹⁴ For 2017, subrecipients will follow the audit requirements in 45 CFR 75 Subpart F, as applicable, and the requirements in the Texas Single Audit Act.

outcomes. Subrecipient monitors review necessary program documents and financial records through desk reviews and on-site reviews to ascertain compliance with program requirements. Selection of contracts for monitoring is primarily based on risk assessment. LIHEAP subrecipients are monitored at least once every three years. This is a component of the risk assessment score. If a subrecipient also has Community Service Block Grant funds, the LIHEAP monitoring may be done at the same time. Subrecipients that leverage LIHEAP funds with DOE funds for weatherization are monitored according to the DOE monitoring schedule (once a year). Contracts may also be selected for monitoring based on other factors, such as prior findings, complaints, or special requests.

10.7. Site Visits: Onsite monitoring visits are conducted at least once every three years. The Department will inspect a minimum of 5% of all LIHEAP weatherized units reported as complete.

Desk Reviews: Some materials are requested and reviewed at the Department's office prior to the onsite visit. If the review results in findings of noncompliance, corrective action reviews are completed as a desk review rather than a return to the subrecipient's office.

10.8. How often is each local agency monitored? At least once, every three years.

10.9. What is the combined error rate for eligibility determinations? (Optional question)
Optional

10.10. What is the combined error rate for benefit determinations? (Optional question)
Optional

10.11. How many local agencies are currently on corrective action plans for eligibility and/or benefit determination issues? (Number only) 0

10.12. How many local agencies are currently on corrective action plans for financial accounting or administrative issues? (Number only) 1

Section 11: Timely and Meaningful Public Participation, 2605(b)(12) – Assurance 12, 2605(c)(2)

11.1 How did you obtain input from the public in the development of your LIHEAP plan?

Check all that apply:

- Tribal Council meeting(s)
- Public Hearing(s)
- Draft Plan posted to website and available for comment
- Hard copy of plan is available for public view and comment
- Comments from applicants are recorded
- Request for comments on draft Plan is advertised
- Stakeholder consultation meeting(s)
- Comments are solicited during outreach activities
- Other, describe: Comments are solicited via on-line forums.

11.2 What changes did you make to your LIHEAP plan as a result of this participation?

Will be completed after the public participation process is complete.

Public Hearings, 2605(a)(2)

11.3 List the date(s) and location(s) that you held public hearing(s) on the proposed use and distribution of your LIHEAP funds?

Date	Event Description
PENDING SCHEDULING	LIHEAP Plan Public Hearing – Austin, Texas
	LIHEAP Plan Public Hearing – San Antonio, Texas
	LIHEAP Plan Public Hearing – Houston, Texas
	LIHEAP Plan Public Hearing – Fort Worth, Texas

11.4 How many parties commented on your plan at the hearing(s)?

Will be completed after the public participation process is complete.

11.5 Summarize the comments you received at the hearing(s).

Will be completed after the public participation process is complete.

11.6 What changes did you make to your LIHEAP plan as a result of the public hearing(s)?

Will be completed after the public participation process is complete.

Section 12: Fair Hearings, 2605(b)(13) – Assurance 13

12.1 How many fair hearings did the grantee have in the prior Federal fiscal year?

None

12.2 How many of those fair hearings resulted in the initial decision being reversed?

N/A

12.3 Describe any policy and/or procedural changes made in the last Federal fiscal year as a result of fair hearings?

N/A

12.4 Describe your fair hearing procedures for **households whose applications are denied**.

Subgrantee contracts include the following section:

SECTION 39. APPEALS PROCESS

In compliance with the LIHEAP Act, Subrecipient must provide an opportunity for a fair administrative hearing to individuals whose application for assistance is denied, terminated or not acted upon in a timely manner. Subrecipient must establish a denial of service complaint procedure in accordance with §5.405 the State Rules. The rule states:

(a) Subrecipient shall establish a denial of service complaint procedure to address written complaints from program applicants/clients. At a minimum, the procedures described in paragraphs (1) - (8) of this subsection shall be included:

(1) Subrecipients shall provide a written denial of assistance notice to applicant within ten (10) days of the adverse determination. This notification shall include written notice of the right of a hearing and specific reasons for the denial by component. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) days of receipt of the denial notice.

(2) Subrecipient who receives an appeal shall establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their client files.

(3) Subrecipients shall hold the appeal hearing within ten (10) business days after the Subrecipient received the appeal request from the applicant.

(4) Subrecipient shall record the hearing.

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case.

(6) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(7) Subrecipient shall notify applicant of the decision in writing. The Subrecipient shall mail the notification by close of business on the business day following the decision (1 day turn-around).

(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing and no further appeal is afforded to the applicant.

(b) If the applicant is not satisfied, the applicant may further appeal the decision in writing to the Department within ten (10) days of notification of an adverse decision.

(c) Applicants/clients who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Texas Government Code, Chapter 2001.

(d) The hearing shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient.

(e) If client appeals to the Department, the funds should remain encumbered until the Department completes its decision.

12.5 When and how are applicants informed of these rights?

Within ten days of the determination the Subrecipient must provide written notification; can be made in person or by mail.

12.6 Describe your fair hearing procedures for **households whose applications are not acted on in a timely manner**.

Applicants are required to submit an application each program year. During the intake process, applicants are assigned a priority rating based on indicators such as poverty level, energy burden and use, and the presence of vulnerable household members. The applicant is informed of their rating at that time and informed whether their application will be acted on immediately or if higher priority applicants will be served first. If due to a low priority rating an applicant does not receive services during a program year, the applicant must re-apply the following year. This is a program requirement and is not subject to applicant appeal.

If an applicant is concerned that their application has been mishandled, the applicant may file a complaint with the Department. TDHCA has an online complaint system, and staff phone numbers are posted online. In general, applicants who have a complaint are given contact information for TDHCA at the time the complaint is received by the Subrecipient. Applicants who call are encouraged to use the online system, but rarely do. Staff records the complaint and proceeds as if the complaint were a denial of services appeal, as described in Section 12.4 above.

12.7 When and how are applicants informed of these rights?

Applicants who have a complaint are given contact information for TDHCA at the time the complaint is received by the Subrecipient.

Section 13: Reduction of home energy needs, 2605(b)(16) – Assurance 16

13.1 Describe how you use LIHEAP funds to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance?

Provide literature and energy conservation education; refer client to other appropriate programs; encourage responsible vendor and consumer behavior; provide applications, forms, and energy education materials in Spanish, English, or other language when appropriate.

13.2 How do you ensure that you don't use more than 5% of your LIHEAP funds for these activities?

The Assurance 16 budget is a standalone line item in the subrecipient contract and they are limited by the amount allocated in the contract.

13.3 Describe the impact of such activities on the number of households served in the previous Federal fiscal year.

The Department does not administer Assurance 16 as a stand-alone program or component. Households are not required to apply for these services. As such, the Department does not track this data.

13.4 Describe the level of direct benefits provided to those households in the previous Federal fiscal year.

The Department does not administer Assurance 16 as a stand-alone program or component. All clients benefit from these activities as part of intake and outreach. Benefit levels are the same as previously described.

13.5 How many households applied for these services?

The Department does not administer Assurance 16 as a stand-alone program or component. Households are not required to apply for these services.

13.6 How many households received these services?

Since the Department does not administer Assurance 16 as a stand-alone budget item or component and there is no application requirement, this question is not applicable.

Section 14: Leveraging Incentive Program, 2607A

14.1 Do you plan to submit an application for the leveraging incentive program?

Yes No

14.2 Describe instructions to any third parties and/or local agencies for submitting LIHEAP leveraging resource information and retaining records.

Pursuant to the Memorandum of Understanding between the Department and the Texas Public Utility Commission, the Commission will make available to the Department information on LITE-UP electric discount program electric activities sufficient for the Department to report activities to USHHS for the previous federal fiscal year.

14.3 For each type of resource and/or benefit to be leveraged in the upcoming year that will meet the requirements of 45 C.F.R. § 96.87(d)(2)(iii), describe the following:

Resource	What is the type of resource or benefit?	What is the source(s) of the resource?	How will the resource be integrated and coordinated with LIHEAP?
1	Electric utility discount	Texas Public Utility Commission	The Department will refer eligible LIHEAP households to LITE-UP (Rate discount for Elderly households), and the Commission will refer eligible LITE-UP households to the Department.

Section 15: Training

15.1. Describe the training you provide for each of the following groups:

a. Grantee Staff:

Formal training on grantee policies and procedures

How often?

Annually

Biannually

As needed

Other – Describe:

Employees are provided with policy manual

Other – Describe:

b. Local Agencies:

Formal training conference

How often?

Annually

Biannually

As needed

Other – Describe: The conference is sponsored by the Texas Association of Community Action Agencies; the Department provides training at this conference.

On-site training

How often?

Annually

Biannually

As needed

Other – As needed as determined either by the Department or by request of the agency.

Employees are provided with policy manual

Other – Describe: the Department schedules a teleconference each quarter to provide information, training, and technical assistance to the local agencies.

c. Vendors

Formal training conference

How often?

Annually

Biannually

As needed

Other – Describe:

Policies communicated through vendor agreements

Policies are outlined in a vendor manual

Other – Describe:

15.2. Does your training program address fraud reporting and prevention?

Yes

No

Section 16: Performance Goals and Measures, 2605(b)

16.1 Describe your progress toward meeting the data collection and reporting requirements of the four required LIHEAP performance measures. Include timeframes and plans for meeting these requirements and what you believe will be accomplished in the coming federal fiscal year. As of 05/10/16 the Department is in the final stages of testing an in-house database built specifically for capturing LIHEAP Performance Measures from Subrecipients. The Department anticipates reporting on required performance measures on the next LIHEAP Households report due in December of 2016.

16.2 Summarize results of performance goals and measures for the prior Federal fiscal year.

Section 17: Program Integrity, 2605(b)(10)

17.1. Fraud Reporting Mechanisms

a. Describe all mechanisms available to the public for reporting cases of suspected waste, fraud, and abuse. Select all that apply.

- Online Fraud Reporting
- Dedicated Fraud Reporting Hotline
- Report directly to local agency/district office or Grantee office
- Report to State Inspector General or Attorney General
- Forms and procedures in place for local agencies/district offices and vendors to report fraud, waste, and abuse.
- Other – describe:

b. Describe strategies in place for advertising the above-referenced resources. Select all that apply.

- Printed outreach materials
- Addressed on LIHEAP application
- Website
- Other – describe:

17.2. Identification Documentation Requirements

a. Indicate which of the following forms of identification are required or requested to be collected from LIHEAP applicants or their household members.

Type of Identification Collected	Collected from Whom?		
	Applicant Only	All Adults in HH	HH Members Seeking Assistance*
Social Security Card is photocopied and retained	Required <input type="checkbox"/>	Required <input type="checkbox"/>	Required <input type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>
Social Security Number (without actual card)	Required <input type="checkbox"/>	Required <input type="checkbox"/>	Required <input type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>
Government-issued identification card (i.e.,: driver’s license, state ID, Tribal ID, passport, etc.)	Required <input type="checkbox"/>	Required <input type="checkbox"/>	Required <input type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>
Other: clients provide their identification to the subrecipients at the time of application	Required <input checked="" type="checkbox"/>	Required <input type="checkbox"/>	Required <input type="checkbox"/>

*Households may include members who are not seeking assistance and may not be included in the household count.

b. Describe any exceptions to the above policies.

17.3. Identification Verification

Describe what methods are used to verify the authenticity of identification documents provided by clients or household members. Select all that apply.

- Verify SSNs with Social Security Administration
- Match SSNs with death records from Social Security Administration or state agency
- Match SSNs with state eligibility/management system (e.g., SNAP, TANF)
- Match with state Department of Labor system
- Match with state and/or federal corrections system
- Match with state child support system
- Verification using private software (e.g., The Work Number)
- In-person certification by staff
- Match SSN/Tribal ID number with tribal database or enrollment records (for tribal grantees only)
- Other – describe:

Public organization subrecipients verify the authenticity of identification documents provided by clients who are not U.S. citizens or nationals. That verification is made through the Systematic

Alien Verification for Entitlements (“SAVE”) system. The department is contemplating a state wide data collection system

17.4. Citizenship/Legal Residency Verification

What are your procedures for ensuring that household members are U.S. citizens or aliens who are qualified to receive LIHEAP benefits?

- Clients sign an attestation of citizenship or legal residency
- Clients’ submission of Social Security cards is accepted as proof of legal residency
- Noncitizens must provide documentation of immigration status
- Citizens must provide a copy of their birth certificate, naturalization papers, or passport
- Noncitizens are verified through the SAVE system
- Tribal members are verified through Tribal database/Tribal ID card
- Other – describe:

17.5. Income Verification

What methods does your agency utilize to verify household income?

- Require documentation of income for all adult household members
 - Pay stubs
 - Social Security award letters
 - Bank statements
 - Tax statements
 - Zero-income statements
 - Unemployment Insurance letters
 - Other – describe: Court Documents or government benefit statements as applicable.
- Computer data matches:
 - Income information matched against state computer system (e.g., SNAP, TANF)
 - Proof of unemployment benefits verified with state Department of Labor
 - Social Security income verified with SSA
 - Utilize state directory of new hires
- Other – describe:

17.6. Protection of Privacy and Confidentiality

Describe the financial and operating controls in place to protect client information against improper use or disclosure.

- Policy in place prohibiting release of information without written consent
- Grantee LIHEAP database includes privacy/confidentiality safeguards
- Employee training on confidentiality for:
 - Grantee employees
 - local agencies/district offices
- Employees must sign confidentiality agreement
 - Grantee employees
 - local agencies/district offices
- Physical files are stored in a secure location

Other – describe:

Grantee contracts include the following section:

SECTION 9. RECORD KEEPING REQUIREMENTS

Subrecipient acknowledges that all information collected, assembled, or maintained by Subrecipient pertaining to this Contract, except records made confidential by law, is subject to the Texas Public Information Act (Chapter 552 of Texas Government Code) and must provide citizens, public agencies, and other interested parties with reasonable access to all records pertaining to this Contract subject to and in accordance with the Texas Public Information Act.

Texas Administrative Code, Title 10 Chapter 5, Subchapter A §5.22 requires that:

Client Records. The Department requires Subrecipient organizations that administer Community Affairs Programs and serve clients to document client services. Subrecipient organizations must arrange for the security of all program-related computer files through a remote, online, or managed backup service. Confidential client files must be maintained in a manner to protect the privacy of each client and to maintain the same for future reference. Subrecipient organizations must store physical client files in a secure space in a manner that ensures confidentiality and in accordance with Subrecipient organization policies and procedures. To the extent that it is financially feasible, archived client files should be stored offsite from Subrecipient headquarters, in a secure space in a manner that ensures confidentiality and in accordance with organization policies and procedures.

Texas Administrative Code, Title 10 Chapter 1, Subchapter A §1.24

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this title.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Protected Health Information--As defined in 45 CFR §160.103.

(4) Subrecipient--Includes any entity receiving funds or awards from the Department.

(b) If Subrecipients or Affiliates collect or receive Protected Health Information in the course of administering Department programs, they are required to follow the procedures in Texas Health and Safety Code, Subtitle I, Chapter 181.

(c) A nonprofit agency is exempt from this subchapter; unless the nonprofit's primary business is the provision of health care or reimbursement for health care services.

17.7. Verifying the Authenticity of Energy Vendors

What policies are in place for verifying vendor authenticity?

All vendors must register with the State/Tribe

All vendors must supply a valid SSN or TIN/W-9 form

Vendors are verified through energy bills provided by the household

Grantee and/or local agencies/district offices perform physical monitoring of vendors

Other – describe, and note any exceptions to policies above:

17.8. Benefits Policy – Gas and Electric Utilities

What policies are in place to protect against fraud when making benefit payments to gas and electric utilities on behalf of clients? Select all that apply.

- Applicants required to submit proof of physical residency
- Applicants must submit current utility bill
- Data exchange with utilities that verifies:
 - Account ownership
 - Consumption
 - Balances
 - Payment history
 - Account is properly credited with benefit
 - Other – describe:
- Centralized computer system/database tracks payments to all utilities
- Centralized computer system automatically generates benefit level
- Separation of duties between intake and payment approval
- Payments coordinated among other heating assistance programs to avoid duplication of payments
- Payments to utilities and invoices from utilities are reviewed for accuracy
- Computer databases are periodically reviewed to verify accuracy and timeliness of payments made to utilities
- Direct payment to households are made in limited cases only
- Procedures are in place to require prompt refunds from utilities in cases of account closure
- Vendor agreements specify requirements selected above, and provide enforcement mechanism
- Other – describe:

17.9. Benefits Policy — Bulk Fuel Vendors

What procedures are in place for averting fraud and improper payments when dealing with bulk fuel suppliers of heating oil, propane, wood, and other bulk fuel vendors? Select all that apply.

- Vendors are checked against an approved vendors list
- Centralized computer system/database is used to track payments to all vendors
- Clients are relied on for reports of non-delivery or partial delivery
- Two-party checks are issued naming client and vendor
- Direct payment to households are made in limited cases only
- Vendors are only paid once they provide a delivery receipt signed by the client.
- Conduct monitoring of bulk fuel vendors
- Bulk fuel vendors are required to submit reports to the Grantee
- Vendor agreements specify requirements selected above, and provide enforcement mechanism
- Other – describe:

17.10. Investigations and Prosecutions

Describe the Grantee's procedures for investigating and prosecuting reports of fraud, and any sanctions placed on clients/staff/vendors found to have committed fraud. Select all that apply.

- Refer to state Inspector General
- Refer to local prosecutor or state Attorney General
- Refer to US DHHS Inspector General (including referral to OIG hotline)
- Local agencies/district offices or Grantee conduct investigation of fraud complaints from public
- Grantee attempts collection of improper payments. If so, describe the recoupment process.

- Clients found to have committed fraud are banned from LIHEAP assistance. For how long is a household banned?
- Contracts with local agencies require that employees found to have committed fraud are reprimanded and/or terminated (limited to state law requirements)
- Vendors found to have committed fraud may no longer participate in LIHEAP
- Other — describe: A Subrecipient may be referred to the Department's Enforcement Committee or proposed for debarment.

DRAFT

Section 18: Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. BrBr.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of

Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to

which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion--Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

. By checking this box, the prospective primary participant is providing the certification set out above.

Section 19: Certification Regarding Drug-Free Workforce Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled

Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about --(1)The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted -

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

221 East 11th Street

Austin, Travis County, Texas, 78701

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

By checking this box, the prospective primary participant is providing the certification set out above.

Section 20: Certification Regarding Lobbying

The submitter of this application certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By checking this box, the prospective primary participant is providing the certification set out above.

REQUIRED ATTACHMENTS

The following documents must be attached to this application:

- Assurances signature page
- Designation letter for signature to Assurances is required if someone other than the Governor or Tribal Chairperson signs the Assurances.
- Heating component benefit matrix.
- Cooling component benefit matrix.
- Local Agency Monitoring Schedule



GOVERNOR GREG ABBOTT

October 6, 2015

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Burwell:

In accordance with TEX. GOV'T CODE §§2306.092 and 2306.097 and the Low Income Home Energy Assistance Program (42 U.S.C. §§8621 through 8630), I hereby designate the Texas Department of Housing and Community Affairs as the lead agency for administration of the Low Income Home Energy Assistance Program (LIHEAP) in the state of Texas. The executive director of the department, Timothy K. Irvine, is authorized to make assurances of certification which may be required as part of the annual LIHEAP application process.

This delegation of authority shall remain in full force and effect until modified or rescinded by federal or state statute or by the chief elected official of this state.

Sincerely,

A handwritten signature in black ink that reads "Greg Abbott". The signature is written in a cursive, flowing style.

Greg Abbott
Governor

GA:bwk



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

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Tom H. Gann
J.B. Goodwin

October 12, 2015

*Writer's direct phone # (512) 475-3296
Email: tim.irvine@tdhca.state.tx.us*

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

RE: DESIGNATION OF SIGNATURE AUTHORITY

Dear Secretary Burwell:

In accordance with TEX. GOV'T CODE §§2306.092 and 2306.097 and the Low Income Home Energy Assistance Program (42 U.S.C. §§8621 through 8630), the Texas Department of Housing and Community Affairs is designated by Governor Greg Abbott as the lead agency for administration of the Low Income Home Energy Assistance Program (LIHEAP) in the state of Texas. I, as the Executive Director, am authorized by the Governor to make assurances of certification as required by the annual LIHEAP application process. I hereby delegate to Michael DeYoung, Director of the Community Affairs Division, authority to make such assurances of certification as necessary to effectuate the submission of the annual State of Texas LIHEAP Application and Plan.

This delegation of authority shall remain in full force and effect until modified or rescinded by federal or state statute, or by me, my successor, or my assignee.

Respectfully,

Timothy K. Irvine
Executive Director

[TKI/sdg]

cc: Michael DeYoung



Attachment 3: Benefit Matrix

Program rules found at 10 Texas Administrative Code, Chapter 5 §5.422(d). All benefits are determined based on a sliding scale:

(d) Sliding scale benefit for all CEAP components:

(1) Benefit determinations are based on the Household's income, the Household size, the energy cost and/or the need of the Household, and the availability of funds;

(2) Energy assistance benefit determinations will use the sliding scale described in subparagraphs (A) - (C) of this paragraph:

(A) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed \$1,200;

(B) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed \$1,100; and

(C) Households with Incomes of 76% to at or below 150% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed \$1,000; and

(3) A Household may receive repair of existing heating and cooling units not to exceed \$3,000. Households that include at least one member that is elderly, disabled, or a child age 5 or younger, may receive either repair of existing heating and cooling units or crisis-related purchase of portable heating and cooling units not to exceed \$3,000.

**Texas Department of Housing and Community Affairs
PY 2017 LIHEAP Proposed Monitoring Schedule**

PY2017														
		Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	January '18	February '18	March '18	April '18
52	Contracts Monitored	1	2	4	4	2	8	8	5	6	6	5	1	
32	Agencies Monitored	1	2	2	2	1	4	4	4	3	4	3	2	
5	CEAP			Pecos County	CSA South Texas	WBCO								
				Webb County	EAC Gulf Coast									
16	WAP						CAC Victoria	GETCAP	El Paso BRAVO	Combined CA	Concho Valley	Travis County	AACOG	
						Nueces County	Tri County	Big Bend CAC	City of Fort Worth	EOAC	Dallas County DHHS	PCS		
									South Plains		WTO			
1	CEAP/WAP								NCI					
7	CEAP/WAP						Hill Country	CCSCT		CA Corp	Brazos Valley	TCOG		
							RPMC	CSI						

The Fiscal Year 2017 monitoring schedule is aggregate in nature. The schedule is created on an as-risk assessed basis. The proposed schedule is subject to ongoing edits and changes throughout the fiscal year and does not represent a final schedule.

Abbreviations:

- Pecos County – Pecos County Community Action Agency
- CSA of South Texas – Community Services Agency of South Texas
- WBCO – Williamson-Burnet County Opportunities, Inc.
- Webb County – Webb County Community Action Agency
- EAC of the Gulf Coast – Economic Action Committee of the Gulf Coast
- CAC Victoria – Community Action Committee of Victoria Texas
- GETCAP – Greater East Texas Community Action Program
- El Paso BRAVO – El Paso Community Action Program Project BRAVO
- Combined CA – Combined Community Action, Inc.
- Concho Valley – Concho Valley Community Action Agency
- Travis County – Travis County Health and Human Services and Veterans Services
- AACOG – Alamo Area Council of Governments
- Nueces County – Nueces County Community Action Agency
- Tri-County – Tri-County Community Action, Inc.
- Big Bend CAC – Big Bend Community Action Committee
- City of Fort Worth – City of Fort Worth Neighborhood Services Department

EOAC – Economic Opportunities Advancement Corporation of Planning Region XI
Dallas County DHHS – Dallas County Department of Health and Human Service
PCS – Panhandle Community Services
South Plains – South Plains Community Action Agency
WTO – West Texas Opportunities
NCI – Neighborhood Centers Inc.
Hill Country – Hill Country Community Action Association, Inc.
CCSCT – Community Council of South Central Texas
CA Corp – Community Action Corporation of South Texas
Brazos Valley – Brazos Valley Community Action Agency, Inc.
TCOG – Texoma Council of Governments
RPMC – Rolling Plains Management Corporation
CSI – Community Services Inc.

1k

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION

MAY 26, 2016

Presentation, Discussion, and Possible Action on an order proposing amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter H, Section 8 Housing Choice Voucher Program, §5.802, Local Operators (“LOs”) for the Section 8 Housing Choice Voucher Program (“HCVP”), and directing that they be published in the Texas Register

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) is designated by the U.S. Department of Housing and Urban Development (“HUD”) as a Public Housing Authority (“PHA”) to administer the Section 8 Housing Choice Voucher Program in certain areas where other PHAs do not operate;

WHEREAS, pursuant to §2306.053 Texas Government Code, the Department is authorized to adopt rules governing the administration of the Department and its programs; and

WHEREAS, the proposed amendments to 10 TAC §5.802 remove definitions, eligibility criteria and the application process and requirements to procure new LOs, because, with the exception of several existing LOs, the Department is now administering its own program and is no longer adding LOs, and clarifies the performance requirements for existing LOs;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter H, Section 8 Housing Choice Voucher Program, §5.802, Local Operators for the Section 8 Housing Choice Voucher Program, in the form presented to this meeting, to be published in the Texas Register for review and public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

Years ago, the Department’s voucher program was almost completely administered through a group of subrecipients called Local Operators (“LOs”). LO’s perform unit inspections, provide client processing and perform other administrative duties on the Department’s behalf as Housing Choice Vouchers are issued and maintained in the limited areas served by the Department’s Housing Choice Voucher program. Over time TDHCA has reduced that intermediary role, and now administers most of its vouchers directly. At this time, TDHCA contracts with LOs in only 2 areas – Galveston and Waller County. This contraction of using LOs has allowed the Department to be more efficient

with its administrative funds. Further, some of the duties of the existing LOs are now also performed by the Department and those items – such as receiving client applications, verifying program eligibility, determining unit size and determining tenant payments – are deleted from the rule as LO responsibilities.

Because, with the exception of those two existing LOs, the Department will continue to administer its own program and is no longer adding LOs, the proposed amendments remove definitions, eligibility criteria, the application process and requirements to procure new LOs, and also provide clarification on the performance responsibilities of the existing LOs.

Staff recommends the proposed amendments to §5.802, Local Operators for the Section 8 Housing Choice Voucher program be approved for submission to the Texas Register for publication and public comment.

Attachment A: Preamble and Proposed Amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter H, Section 8 Housing Choice Voucher Program, §5.802, Local Operators for the Section 8 Housing Choice Voucher Program

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter H, Section 8 Housing Choice Voucher Program, §5.802, Local Operators for the Section 8 Housing Choice Voucher Program.

The purpose of the amendments to 10 TAC §5.802 is to remove definitions, eligibility criteria, the application process, and requirements relating to procuring new Local Operators because the Department is no longer utilizing new Local Operators, and clarifies the responsibilities and eligibility criteria and performance requirements for Local Operators.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be clarity of program requirements and programmatic adherence to federal guidelines. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 6, 2016, to July 6, 2016, to receive input on the proposed amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: cadrulecomments@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. July 6, 2016

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The proposed amendments affect no other code, article, or statute.

§5.802. Local Operators for the Section 8 Housing Choice Voucher Program

a) Purpose. This chapter clarifies the performance responsibilities ~~roles~~ and duties of the Local Operators (~~LO~~) for Housing Choice Vouchers (~~Section 8~~) administered by the Texas Department of Housing and Community Affairs (~~the Department~~) ~~identifies a process for potential expansion of the Department's Housing Choice Voucher program to additional areas of the state; and outlines the procedures for the Department to procure new LOs and renew existing LOs.~~

(b) Definitions.

~~(1) Applicant—A Person who has submitted an Application for Department funds or other assistance.~~

~~(2) Application—A request for funds submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material.~~

~~(3) Application Acceptance Period—The period of time that Applications may be submitted to the Department as more fully described in the applicable Notice of Funding Availability (NOFA).~~

~~(4) Application Deficiency—A deficiency or inconsistency, which in the Department's reasonable judgment, may be cured by supplemental information or explanation that will not necessitate a substantial reassessment or re-evaluation of the Application.~~

~~(1) (5) Board--The governing board of the Texas Department of Housing and Community Affairs.~~

~~(2) (6) Contract--The executed written agreement between the Department and a Local Operator Administrator performing an activity related to a program that outlines performance requirements and responsibilities as identified in assigned by the document.~~

~~(3) (7) Department--The Texas Department of Housing and Community Affairs.~~

~~(4) (8) Effective Date—The date on which all applicable parties have signed a Contract.~~

~~(9) Executive Director—Executive Director of the Texas Department of Housing and Community Affairs.~~

(4) Housing Quality Standards--(HQS) are minimum standards for tenant-based programs and are required both at initial occupancy and during the term of the lease. HQS standards apply to the building and premises, as well as to the unit.

~~(5) (10) HUD--U.S. Department of Housing and Urban Development.~~

~~(11) Local government—A county, municipality, special district, or any other political subdivision of the state, a public, nonprofit housing finance corporation created under Chapter 394 of the Texas Local Government Code, or a combination of those entities. (§2306.004).~~

~~(6) (12) Local Operators (LOs)--LOs are the local administrators who perform unit inspections, provide client processing, and perform other administrative duties on the Department's behalf as Housing Choice Vouchers are issued and maintained in some of the local communities served by the Department's Housing Choice Voucher Program.~~

~~(13) Material Deficiency—Any individual Deficiency or group of Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of a LO Application or eligibility for LO Renewal or which, are repeated and pervasive that they indicate a failure by the LO to submit a substantively complete and accurate Application.~~

~~(14) NOFA—Notice of Funding Availability, published in the Office of the Secretary of State's Texas Register Publication.~~

~~(15) Nonprofit Organization—A public or private organization that:~~

~~(A) has evidence of a current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3) of the Internal Revenue Code of 1986, a charitable, nonprofit corporation, or §501(c)(4) of the Internal Revenue Code of 1986, a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective throughout the length of any contract agreements; or a current group exemption letter from the IRS that is dated 1986 or later, that reflects the Applicant classified as a subordinate of a central non-profit organization under the Internal Revenue Code. The group exemption letter must specifically list the Applicant; and~~

~~(B) a private nonprofit organization's pending Application for §501(c)(3) or (4) of the Internal Revenue Code of 1986, status cannot be used to comply with the tax status requirement.~~

~~(16) Open Application Cycle--A defined period during which Applications may be submitted according to a published NOFA and which will be reviewed on a first come first served basis until all funds available are committed or until the NOFA is closed, whichever is earlier.~~

~~(7)(17) Owner--The Person who owns a unit for which a Section 8 Housing Choice Voucher is being considered or being used.~~

~~(8)(18) Program--The Section 8 Housing Choice Voucher Program operated by the Department.~~

~~(19) Program Noncompliance--LOs of the Department's Section 8 program will be in Program Noncompliance if they do not meet the performance requirements or the LO eligibility requirements.~~

(c) Performance Requirements. The duties and expectations of the LO include the following and will be included in the LO contract. LO must:

(1) follow and comply with HUD's rules and regulations, including the U.S. Housing Act of 1937, the Annual Contributions Contract between the Department and HUD, the Housing Assistance Program contract between the Department and the owner of the unit occupied by an assisted family, as well as the Department's Administrative Plan and other applicable laws covering the Program;

(2) designate a specific contact to serve as a liaison with the Department;

(3) disseminate ~~to Housing Choice Voucher recipients~~ information concerning the availability and nature of housing assistance for lower-income families;

(4) ~~seek make public invitations to~~ increase the number of local property Owners willing to make dwelling units available for leasing to eligible families;

~~(5) assist in receiving and reviewing applications from the public for participation in the program;~~

~~(6) assist in verifying program eligibility and selecting eligible families for participation according to Departmental rules and policies;~~

~~(5) (7) assist in the issuance of Housing Choice Vouchers to selected eligible families and provide the family with necessary information regarding the program in accordance with 24 CFR §982.301;~~

~~(8) determine each eligible family's unit size requirements in accordance with Subpart K of 24 CFR Part 982;~~

~~(9) assist in determining the amount of total tenant payment and housing assistance payment, including calculation of allowances for utilities and other services under 24 CFR §982.505;~~

~~(6) (10) certify rent reasonableness under 24 CFR §982.507;~~

~~(7) (11) assist in facilitation of the owner's~~ Owner's execution of the Housing Choice Voucher Contract in a form prescribed by HUD under 24 CFR §982.451;

~~(8) (12) annually, assist in re-determination of families' eligibility and~~ calculation of the amount of housing assistance payment in accordable with HUD established schedules and under 24 CFR §982.516, and submit redetermination information to the Department within ninety (90) to one-hundred-twenty (120) days of request;

~~(9) (13) perform any necessary Housing Quality Standard inspections~~ (or other inspections required by HUD) and notify Owners and families of property inspection determinations;

~~(10) (14) perform any necessary Housing Quality Standard inspections for new admissions within sixty (60) days, or within one-hundred-twenty (120) days with Department approval of sixty (60) day extension;~~

~~(11) (15) assist in coordination of portability requests from housing choice voucher families in accordance with Department policies;~~

~~(12) (16) assist in processing changes in income and changes in household requests in accordance with Department policies;~~

~~(17) provide for prompt and timely lease up of vouchers when released by the Department or when existing vouchers become available through clients exiting the Program;~~

~~(13) (18) maintain confidential client files in a manner that protects the privacy of each client and to maintain the same for future reference;~~

~~(14) (19) store physical client files in a secure space in a manner that ensures confidentiality and in accordance with LO program policies and procedures; and~~

~~(20) add, based on availability, housing choice vouchers to the LO service area; and~~

~~15 (21) perform such other functions as directed by the Department.~~

(d) Eligibility of Local Operators.

(1) Eligibility Criteria for Applicants and LO Contract Renewals. ~~New applicants for LO designation and~~ Currently designated LOs wishing to renew their contract must meet the following eligibility criteria:

~~(A) Organizations or entities eligible to be a LO of the Department's Housing Choice Voucher Program are:~~

~~(i) Nonprofit organizations;~~

~~(ii) Local Units of Government;~~

~~(iii) For-profit organizations;~~

~~(iv) Public Housing Authorities (PHA's); or~~

~~(v) Other eligible entities.~~

~~(A)(B) Eligible organizations must have a publicly accessible confidential meeting space available to meet with Housing Choice Voucher families.~~

~~(B)(C) Eligible organizations must have access to the internet, electronic mail, and a telephone for communication with the Department.~~

(2) Ineligibility Criteria for LOs. The following conditions will cause a ~~new Applicant for LO designation or~~ a currently designated LO wishing to renew their contract, to be ineligible:

~~(A) Program Noncompliance—Each Application and Contract Renewal will be reviewed for Program Noncompliance. Applications and contract renewals found in Program Noncompliance or otherwise violating this chapter at the time of Application and prior to Contract execution are ineligible for funding and will be terminated without being processed as a material deficiency.~~

~~(A) (B) Failure to comply with federal and state law and/or failure to comply with the terms outlined in the LO contract; or refusal by the LO to assist in issuing Housing Choice Vouchers housing choice vouchers in a timely manner and/or unwillingness to add vouchers to the LO service area, may result in the termination of a LO contract.~~

~~(B) (C) The LO Applicant has failed to perform the performance requirements outlined in subsection (c) of this section.~~

~~(C) (D) The LO Applicant is an Administrator of had a previously funded Contract for which Department funds have been partially or fully de-obligated due to failure to meet contractual obligations during the prior 12 months, prior to the Application submission date.~~

~~(D) (E) The LO Applicant has failed to submit or is delinquent in a response to provide an explanation, or evidence of corrective action as a result of a technical assistance visit by the Department.~~

~~(E) (F) The LO Applicant has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the "List of Parties Excluded from Procurement of Non-procurement Programs" or has otherwise been debarred by HUD or the Department.~~

~~(F) (G) The LO Applicant has violated the state's revolving door policy.~~

~~(G) (H) The LO Applicant has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the Application deadline.~~

~~(H) (I) The Applicant at the time of Application submission renewal is:~~

(i) subject to an enforcement or disciplinary action under state or federal securities law or by the Financial Industry Regulatory Authority (FINRA) is subject to a federal tax lien; or
(ii) is the subject of an enforcement proceeding with any governmental entity.

(e) Local Operator Contract Execution and Renewal.

(1) ~~Upon Board approval of a new LO-~~ Upon determination that a renewal is eligible and desired by both parties, the Department's Executive Director or Deputy Executive Director that oversees the Section 8 Housing Choice Voucher Program and the LO shall enter into and execute an agreement for the administration of the Housing Choice Voucher program. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications, amendments or extensions to the contract.

(2) ~~Contracts will be for an initial one year period, with an automatic renewal in one year increments for a period not to exceed four (4) additional years conditioned on maintaining compliance with the eligibility criteria in subsection (d) of this section and having performed according to the performance requirements outlined in subsection (c) of this section. If the LO meets these requirements and is not in Program Noncompliance with the Department, the contract with the LO will be renewed.~~

(3) ~~LOs in an existing contract will, upon expiration of the current contract, be eligible to execute a contract under paragraph (2) of this subsection so long as they are maintaining compliance with the eligibility criteria in subsection (d) of this section and have performed according to the performance requirements outlined in subsection (c) of this section. If the LO meets these requirements and is not in Program Noncompliance with the Department, the new contract described in paragraph (2) of this subsection will be executed.~~

~~(f) New Local Operator Application Procedures and Requirements.~~

~~(1) If a LO has terminated its contract with the Department or chosen not to renew a contract with the Department, and the Department chooses to find a replacement LO to continue providing services to existing clients in the geographic area served by the prior LO, the Department will release a Notice of Funding Availability (NOFA) specifying the defined geographic area requiring continued service, information on the volume and geographic locations of the existing pool of voucher holders, and the LO requirements for operating the program if selected.~~

~~(2) The Department will develop and publish the NOFA and Application materials on its website. Applicants must verify and ensure the accuracy, sufficiency and receipt of all submissions to the Department.~~

~~(3) The Department reserves the right to request supplemental information or explanation from the Applicant in order to cure an Applicant deficiency.~~

~~(4) Applications must be submitted within the Application Acceptance Period as detailed in the NOFA.~~

~~(5) Evaluative criteria and any other Application or contractual requirements will be specified in the NOFA. Applications that do not meet minimum threshold criteria will not be considered for LO designation.~~

~~(g) Expansion of Section 8 service area. At least once each year, no later than March 31st, the Department will evaluate the availability of voucher funding and the current usage of existing vouchers, and determine whether an announcement of funding availability to expand vouchers outside of the current geographic areas served is appropriate. If deemed appropriate, a Notice of Funding Availability will be released specifying eligible geographic areas, evaluative criteria, any restrictions on voucher populations and LO requirements for operating the program if selected.~~

2a

TDHCA Outreach Activities, April 2016

A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public

Event	Location	Date	Division	Purpose
HUD/HOPWA, Affirmatively Furthering Fair Housing Rule	Fort Worth	April 1	Fair Housing/Data Mgt/Reporting	Participant
Texas Association of Realtors/Statewide Realtor Training Webinar	Austin	April 4	Homeownership	Training
Public Hearing/2016 HTC Application Cycle	El Paso	April 4	Multifamily Finance	Public Hearing
Public Hearing/2016 HTC Application Cycle	Tyler	April 5	Multifamily Finance	Public Hearing
Public Hearing/2016 HTC Application Cycle	Lubbock	April 6	Multifamily Finance	Public Hearing
First Thursday Income Eligibility Training	Austin	April 7	Compliance	Training
Public Hearing/2016 HTC Application Cycle	Houston	April 7	Multifamily Finance	Public Hearing
Public Hearing/2016 HTC Application Cycle	Harlingen	April 11	Multifamily Finance	Public Hearing
Public Hearing/2016 HTC Application Cycle	Austin	April 12	Multifamily Finance	Public Hearing
TWC Civil Rights Division/Fair Housing: Overview	Austin	April 12	Fair Housing/Data Mgt/Reporting	Webinar
Public Hearing/2016 HTC Application Cycle	Dallas	April 13	Multifamily Finance	Public Hearing
Housing and Health Services Coordination Council Meeting	Austin	April 13	Housing Resource Center, Fair Housing/Data Mgt/Reporting	Presentation, Participant
Fair Housing Workgroup	Austin	April 13	Fair Housing/Data Mgt/Reporting	Participant
2016 Conference/Texas Apartment Association	Houston	April 14	External Affairs	Panelist, Moderator
TSHEP/Homebuyer Education Providers Train the Trainer Certification	San Antonio	April 18-22	Homeownership	Presentation
TWC Civil Rights Div/Fair Housing: Reasonable Accommodation	Austin	April 19	Fair Housing/Data Mgt/Reporting	Webinar
Community Resource Coordination Group/Data-Research Subcommittee Meeting	Austin	April 19	Housing Resource Center	Participant
Texas Fair Housing Conference	Austin	April 20	Executive, Fair Housing/Data Mgt/ Reporting	Presentation, Participant
Public Comment Period/Utility Allowances	Austin	April 20-May 16	Compliance	Public Comment

Event	Location	Date	Division	Purpose
Promoting Independence Advisory Committee	Austin	April 21	Housing Resource Center	Participant
Grand Re-Opening/Houston House	Victoria	April 21	Multifamily Finance	Remarks, Participant
2016 Regional Meeting/Assoc of Rural Communities in Texas	Brenham	April 21	Policy & Public Affairs	Presentation
National Housing Trust/Fund Allocation Plan Roundtable	Austin	April 25	Multifamily Finance	Roundtable
TWC Civil Rights Div/Fair Housing: Selection Criteria, Wait List Mgt, and Affirmative Mkt.	Austin	April 26	Fair Housing/Data Mgt/Reporting	Webinar
San Antonio Board of Realtors/Realtor Training	San Antonio	April 26	Homeownership	Training
Texas Interagency Council for the Homeless	Austin	April 26	Housing Resource Center	Participant
2017 QAP Planning Session/At-Risk Development	Austin	April 27	Multifamily Finance	Roundtable
Intellectual and Developmental Disabilities System Redesign Advisory Council/Housing Subcommittee Meeting	Austin	April 27	Housing Resource Center	Participant
National Housing Conference	New York City	April 28-29	Fair Housing/Data Mgt/Reporting	Participant
Homebuyer Fair	Pearland	April 30	Homeownership	Presentation, Exhibitor

Internet Postings of Note, April 2016

A list of new or noteworthy documents posted to the Department's website

Request for Proposals: Master Servicer — *seeking a qualified entity to service mortgage loans made through the Department's Single Family homeownership programs (links to the Comptroller's Office webpage):*

http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=123671

Compliance: 2016 Project Income and Rent Tool — *used to determine maximum income and rent limits for rental properties financed through the Housing Tax Credit, Tax Exempt Bond, HOME, Neighborhood Stabilization and Housing Trust Fund programs:*

www.tdhca.state.tx.us/pmcomp/irl/index.htm

Community Affairs: Results Oriented Management and Accountability Cycle and Resource Model — *new web page providing details regarding the performance-based initiative ROMA promoting greater effectiveness between the Department and the Community Action Network:*

www.tdhca.state.tx.us/community-affairs/csbg/index.htm

Community Affairs: 2016 Comprehensive Energy Assistance Program Subrecipient List — *updated to reflect most current list of agencies administering the Department's CEAP Program by name, address, contact name, and counties served:*

www.tdhca.state.tx.us/community-affairs/ceap/index.htm

Community Affairs: 2016 Community Services Block Grant Program Subrecipient List — *updated to reflect most current list of agencies administering the Department's CSBG Program by name, address, contact name, and counties served:*

www.tdhca.state.tx.us/community-affairs/csbg/index.htm

Community Affairs: 2016 Weatherization Assistance Program Subrecipient List — *updated to reflect most current list of agencies administering the Department's WAP Program by name, address, contact name, and counties served:*

www.tdhca.state.tx.us/community-affairs/wap/index.htm

2016-1 Multifamily Direct Loan NOFA Application Log: April 14, 2016 — *listing applicants seeking financing through the Department's Multifamily Direct Loan Program by property name, location, funds requested, and housing type:*

www.tdhca.state.tx.us/multifamily/home/index.htm

Program Services: Environmental Review Process Specific Web Guide — *A revitalized environmental section providing guidance on the latest HUD format changes, requirements, and updates which will be required for all environmental submissions as of May 5, 2016:*

www.tdhca.state.tx.us/program-services/environmental/index.htm; www.tdhca.state.tx.us/program-services/environmental/tiered.htm; www.tdhca.state.tx.us/program-services/environmental/docs.htm

Texas Homeownership Division: Combined Income and Purchase Price Limits — *providing updated income limits for eligibility purposes for the My First Texas Home, Texas Mortgage Credit Certificate programs by non-targeted and targeted areas of the state, MSA or county, and maximum home purchase prices:*

www.tdhca.state.tx.us/homeownership/fthb/downloads.htm

Section 811 Program: Student Eligibility Criteria: — *reflecting new eligibility requirements for individuals who are part-time or full-time student at an institution of higher education seeking rental housing through the Department's Section 811 Project Rental Assistance Program:*

www.tdhca.state.tx.us/section-811-pra/participating-properties.htm

Emergency Solutions Grants Program: 30% Income Limits for Texas — *detailing household income at 30% of the Area Median Family Income by MSA and county for households ranging from one to eight members:*

www.tdhca.state.tx.us/community-affairs/esgp/guidance-solutions.htm

2015 Housing Sponsor Report: Revised April 2016 — *revised document detailing property and occupant profiles of reporting properties receiving assistance from the Department:*

www.tdhca.state.tx.us/housing-center/pubs-plans.htm

2017 Amy Young Barrier Removal Program: Notice of Funding Availability — *for eligible entities interested in applying to administer funds through the Department's AYBR Program:*

www.tdhca.state.tx.us/hf/nofa.htm

2b

BOARD REPORT ITEM

EXTERNAL AFFAIRS

MAY 26, 2016

Report regarding The Report on Customer Service as required by Chapter 2114 of the Texas Government Code

BACKGROUND

The Report on Customer Service (“Report”) is required by Chapter 2114 of the Texas Government Code. This chapter requires state agencies to develop customer service standards and implement customer satisfaction assessment plans. The Report on Customer Service is due to the Legislative Budget Board (“LBB”) and the Governor’s Office of Budget, Planning, and Policy by June 3, 2016.

On March 31, 2016, the Texas Department of Housing and Community Affairs (“TDHCA” or “the Department”) publicized the release of the online TDHCA Customer Service Survey (“Survey”) through social media, email, Web site, phone and written announcements. The Department used web-based software called Survey Monkey (www.surveymonkey.com) to develop a short inquiry that specifically asked respondents about the eight customer service areas listed in the *Instructions for Preparing and Submitting Agency Strategic Plans - Fiscal Years 2017 to 2021* (staff; service timeliness; communications; Web site; printed information; facility; complaint process; and general satisfaction).

The Survey also contained demographic questions: 17 statements asking the respondent to rate TDHCA on each statement using a Likert scale; one question to determine the medium through which the survey was taken; and an opportunity text field for the respondents to elaborate with additional comments, recognitions, or concerns. The survey was available in both English and Spanish in order to reach a broad base of customers and was made available for completion until April 29, 2016.

There were 223 completed surveys. Out of 54,861 people who received the survey invitation, this represents a 0.41% response rate. While the number of survey invitations decreased by 23.2% from 2014 to 2016 (71,551 invitations in 2014 and 54,861 in 2016), the response rate saw only a slight decrease. There were 766 completed surveys in 2014, which yielded a response rate of 1.1%, while there were 233 completed surveys in 2016, which yielded a response rate of 0.4%.

The survey results were analyzed by customer type including (1) all survey respondents, (2) Household Respondents, and (3) Organization Respondents. Additionally, results were analyzed by type of business conducted with TDHCA: (4) Community Affairs, (5) Housing Programs and (6) Manufactured Housing. Among all respondents, the survey indicated a positive overall satisfaction with TDHCA customer service. All five respondent types had the same statement with the highest average ranking: “TDHCA staff members were courteous.”

The Customer Service Survey identified successes as well as provided guidance to improve the Department's customer service. The additional comments included by 53 respondents help give specific direction to TDHCA as to what worked and what needs improvement. For 2018, the main change TDHCA would make to the survey is to reach a more randomly-sampled and broader population, particularly with the Manufactured Housing Division customers. Of the 223 respondents, only 13.9% had contact with the Manufactured Housing Division.

Overall, 79.0% of respondents agreed that they were satisfied with their experiences at TDHCA, which was a slight increase from 76.4% in 2014. The customer service element with the highest overall satisfaction rate was the staff category, with 84.8% of all respondents agreeing that TDHCA staff members are courteous, and 81.9% of respondents agreeing that TDHCA staff members demonstrate a willingness to assist.

The Department continues to promote several customer-service related activities such as:

Social Media: Establishment of the Department's presence on Twitter and Facebook in late 2011 has expanded communication opportunities beyond the Department's historical communication routes to more broadly include current audiences as well as additional public members and potential stakeholders. Since the last Customer Service Survey in May 2014, the Department's Twitter followers has grown by 82% (from 417 in May 2014 to 761 in May 2016) and the Department's number of Facebook "likes" has grown by 129% (from 394 in May 2014 to 903 in May 2016). Further, since the 2014 Customer Service Survey, the Department has launched a YouTube channel in September 2014 and a flickr page in October 2015. Interest in these new Social Media platforms is still growing with 22 YouTube Subscribers and no flickr followers as of mid-May 2016.

Online Forums: The Department continues to use online discussion forums, which enhance opportunities for stakeholders to participate in Department activities, such as rules and plan development, and general input. As of mid-May 2016, the Department has 734 registered discussion forum members.

Surveys: Beyond the biennial Customer Service Survey, the many divisions within the Department actively survey their customer groups throughout the year. For example, the Compliance Division sends an online survey to program administrators and subrecipients, following a monitoring visit to receive feedback on the monitoring process and provide an established and formal channel of communication between Department staff and customers. The Compliance Division provides a quarterly report to the Department's Board of Directors to share the results of the survey with the Board members and the public.

Complaint-Handling Process: More respondents agreed that they understood how to file a complaint (63.7%) compared to the 2014 survey responses (57.0%). Approximately 62.3% of the respondents agreed that they believed the complaint would be addressed in a reasonable manner in 2016, compared to 62.2% in 2014.

TDHCA is acting upon the results found in the 2016 Survey. Once the results are compiled, each division at TDHCA will receive a summary of comments about their programs to determine successes, challenges, or any recommended follow-up.

2c

REPORT ITEM
HOME PROGRAM DIVISION
MAY 26, 2016

Report on Activities Assisted under HOME Investment Partnerships Program (“HOME”) Reservation System Participant (“RSP”) Agreement No. 2015-0119 with the Institute for Building Technology and Safety (“IBTS”) to correct construction deficiencies on four single family homes located in Texas City and League City, Galveston County originally assisted by Ebenz Inc. (“Ebenz”)

BACKGROUND

On January 28, 2016, and March 31, 2016, the Board authorized staff to proceed with a compliant course of action to address construction deficiencies as necessary on four single family homes located in Texas City and League City, Galveston County, originally assisted under RSP Agreement No. 2011-0062 by Ebenz. A nonprofit organization, IBTS, applied for an RSP Agreement from the Department for this purpose; the agreement is now in place and IBTS has commenced activities that will ultimately resolve deficiencies on all four houses. IBTS will access HOME funds for three of the four houses, and has committed to using their own funds to complete activities on the fourth home that will not be corrected with HOME funds. IBTS has completed work write-ups for three of the four houses, and is working with the homeowners of the last home to complete this process as well. This last homeowner has minor deficiencies as well as the lack of an accessible route, and the walk-through that will result in a work write-up was scheduled for the week of May 16, 2016.

At the Governing Board meeting of March 31, 2016, the Board approved the investment of HOME funds as well as determined funding limitations per house. IBTS placed three activities out for bid in April 2016, accordingly, and received one bid response from a contractor bidding on all three houses. The bid proposals were all within the amounts authorized by the Board; however the bid for the home under construction is approximately 30% higher than what staff anticipated would be necessary to complete construction activities. IBTS is currently negotiating the bid with this contractor, and is in contact with another contractor who may also bid on this work.

As of the week of May 16, 2016, IBTS has awarded bids to correct minor deficiencies in two of the houses. IBTS anticipates awarding the bid for the home currently under construction where the bid amount exceeds staff estimates by 30%, as well as the home where the work-write up is not yet complete, by the end of May 2016. IBTS anticipates that all construction activities will be complete by the end of the summer, 2016.

Staff will continue to report to the Board on the resolution of this situation.

ACTION ITEMS

3a

BOARD ACTION REQUEST

ASSET MANAGEMENT

MAY 26, 2016

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit (“HTC”)/HOME Application for Merritt Leisure (#15234)

RECOMMENDED ACTION

WHEREAS, in 2015 Merritt Leisure was awarded an annual allocation of 9% tax credits in the amount of \$786,147 as well as a \$2,000,000 Direct HOME loan at 3% interest rate, 18-year term and 30-year amortization to construct 194 new multifamily units, including 97 HTC and HOME restricted units in the city of Midland;

WHEREAS, at the Board meeting of March 31, 2016, the Development Owner’s material amendment to the Housing Tax Credit Application for Merritt Leisure was presented to the Board for approval and the Board denied the request;

WHEREAS, on April 14, 2016, the Development Owner submitted a second amendment request identifying significant changes to the Development plan and financing structure that trigger material alterations to the Application under §2306.6712(d)(1) of the Texas Government Code and 10 TAC §10.405(a)(3) and require Board approval;

WHEREAS, the requested changes do not change this Application’s priority of allocation at the time of award because the commitment of development funding by Local Political Subdivision is no longer re-scored after Carryover, but if it were to be re-scored today this is the only criteria that would have changed and it would have resulted in a three-point reduction and the Application would have remained ahead of its next closest competitor;

WHEREAS, the changes are, according to the Development Owner, due to changes in local market conditions as a result of energy production and pricing volatility;

WHEREAS, the changes in the second amendment, except for scoring, are as or more substantive, as described in the charts and narrative below, than the first amendment in that the Development site has been reduced and the number of market rate units has also been reduced but, as described in the supporting materials, has some benefits as well; and,

WHEREAS, consistent with staff’s previous recommendation for approval of the prior amendment, staff recommends approval based on an affirmative underwriting re-evaluation and no clear rule based defect;

NOW, therefore, it is hereby

RESOLVED, that the requested application amendment for Merritt Leisure is as determined by the Board at this meeting and the Executive Director and his designees are

hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

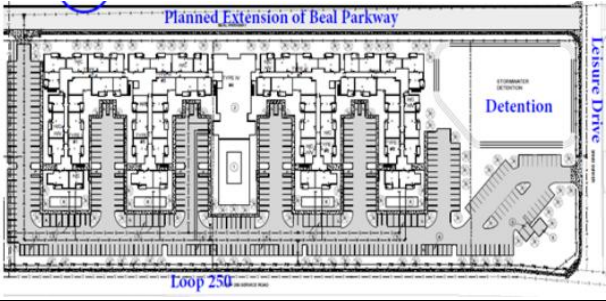
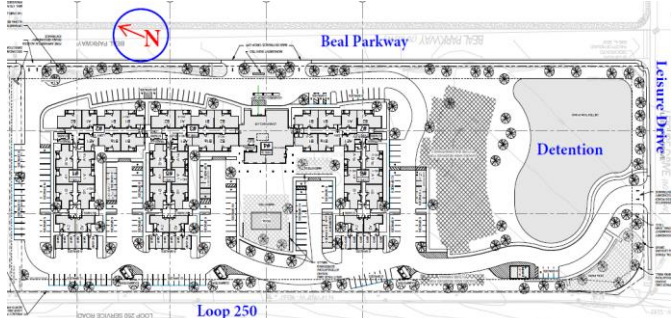
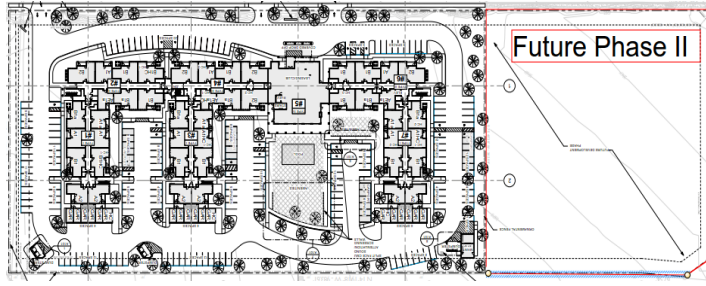
Merritt Leisure applied for Competitive Housing Tax Credits and HOME funding during the 2015 cycle. The Applicant was awarded an annual allocation of 9% tax credits in the amount of \$786,147 as well as a \$2,000,000 Direct HOME loan at 3% interest rate, 18-year term and 30-year amortization, consistent with the 2015-1 HOME and TCAP Multifamily Development Notice of Funding Availability (“NOFA”) approved by the Board in January 2015. On December 21, 2015, the Applicant (DDC Merritt Leisure, Ltd. – Colby Denison) submitted a request to materially amend the application for Merritt Leisure. The request was presented to the Board at its March 31, 2016, meeting. The Applicant has identified as a concern that the oil and gas market, to which much of the Midland economy is tied, is continuing to experience adverse conditions and is not rebounding as hoped. This is placing and will, until oil prices rebound, continue to place downward pressure on rents and occupancy, yet the city of Midland continues to believe it needs additional affordable housing for its elderly population. As a result the Applicant is seeking a way to reconfigure the transaction to reduce personal financial risk as a result of current uncertainty over market conditions in Midland.

At the previous meeting, when the Board was considering the original amendment request, there were concerns expressed over the significant amount of change involved, however, the principal, Colby Denison, was not present and able to address the Board’s concerns. However, under current rules, the amendment request did not appear to be expressly outside the bounds of what can be considered. The amendment generated an in depth policy discussion among Board members regarding the amount of changes to an application. After Board discussion regarding the request and expressions of reluctance to go forward with an Application amendment that was altered substantially from what was originally proposed and approved, the Board denied the Applicant’s amendment request.

Subsequently on April 14, 2016, the Applicant submitted a second amendment request which is the action requested in this item. Although the Board was unable to engage directly with Mr. Denison at the prior meeting, Mr. Denison has had the benefit of reviewing the record of the Board meeting and presumably taken this into account in making this revised request. Staff continues to have concern that the scope of the requested amendment is significant, impacting affordable units, market units, unit mix, and the financing structure. It is noted that like the first amendment request, this request reduces total development costs and reduces the senior debt per unit.

The Applicant continues to state that the deteriorating market conditions in Midland as the reason the changes being requested in this second amendment are necessary and were unforeseeable. Tables summarizing the changes proposed to the Application between the first and current amendments are provided on the following pages.

Material Alterations as defined in 2306.6712(d) and 10 TAC §10.405(a)(3)

Application	1 st Amendment	2 nd Amendment
<p><u>A significant modification to the site plan</u></p> <p>9 residential buildings 194 total units 97 market rate units</p> 	<p>7 residential buildings 140 total units (28% reduction) 43 market rate units (55% reduction)</p> 	<p>7 residential buildings 140 total units (28% reduction) 27 market rate units (72% reduction)</p> 
<p><u>A modification of the residential density of at least 5 percent</u></p> <p>Development Site at Application = 9.10 acres Density 21.3 units/acre</p>	<p>Development Site at 1st Amendment = 9.10 acres Density 15.3 units/acre (28% decrease)</p>	<p>Development Site at Amendment = 6.16 acres (- 32%) Density 22.7 units/acre (6.5% increase from Application; 48% increase from 1st Amendment)</p>

Material Alterations as defined in 2306.6712(d) and 10 TAC §10.405(a)(3)

Application						1 st Amendment						2 nd Amendment					
<u>Significant increases in development costs or changes in financing that affect the Department's direct loan financing structure or result in reductions of credit</u>																	
Sources and Uses						Sources and Uses						Sources and Uses					
Description	Loan/Equity Amount	Int. Rate	Amort	Term	Synd. Rate	Description	Loan/Equity Amount	Int. Rate	Amort	Term	Synd. Rate	Description	Loan/Equity Amount	Int. Rate	Amort	Term	Synd. Rate
Comm Bank of Texas	\$16,400,000	5.75%	40	18		Citibank-FHA 221(d)(4)	\$10,200,000	4.00%	40	40		Citibank-FHA 221(d)(4)	\$8,300,000	4.25%	40	40	
TDHCA HOME	\$2,000,000	3.00%	30	18		TDHCA HOME	\$2,000,000	3.00%	30	30		TDHCA HOME	\$2,000,000	3.00%	40*	40*	
City of Midland	\$1,600,000	3.00%	30	15		City of Midland	\$0					City of Midland	\$0				
City of Midland MATCH	\$0					City of Midland MATCH	\$0					City of Midland MATCH	\$0				
City of Midland (50% Road Construction)	\$0					City of Midland (50% Road Construction)	\$0					City of Midland (50% Road Construction)	\$225,861	0.00%	0	0	
RBC- Equity	\$7,545,502				0.96	RBC- Equity	\$8,174,212				1.04	RBC- Equity	\$8,174,212				1.04
Deferred Developer Fee	\$673,070					Deferred Developer Fee	\$1,084,409					Deferred Developer Fee	\$698,229				
TDC	\$28,218,572					TDC	\$21,458,621					TDC	\$19,398,302				

*requested new terms on Department's HOME loan

Additional Financing Changes Identified Since Application

Application			1 st Amendment			2 nd Amendment		
<u>Local Political Subdivision financing</u>								
\$1.6M City of Midland loan plus up to \$95,000 reimbursement for road but the latter was not considered LPS funding for points. <i>14 pts awarded under this scoring criteria</i>			\$1.6M City of Midland loan withdrawn <i>-11 pt difference</i>			\$225K - commitment from City of Midland to pay for half of offsite public road. This is a net reduction of \$1,470,000 in local funding from the original application. <i>-3 pt difference</i>		
<u>Cost per SF</u>								
\$73.49 <i>12 pts awarded under this scoring criteria</i>			\$81.39 <i>-2 pt difference</i>			\$74.94 <i>12 pts remain eligible</i>		

Addendum to Underwriting Report

TDHCA Application #: Program(s):

Address/Location:

City: County: Zip:

APPLICATION HISTORY	
Report Date	PURPOSE
05/19/16	2nd Amendment Revision on HOME Unit Designations
05/10/16	2nd Amendment Request
03/29/16	1st Amendment Request
10/15/15	Change in maturity of TDHCA HOME Loan
06/15/15	Original Underwriting Report

ALLOCATION

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
HOME Activity Funds	\$2,000,000	3.00%	30	30	\$2,000,000	3.00%	30	40	2nd
HOME CHDO Expenses	\$50,000				\$50,000				
LIHTC (Annual)	\$786,147				\$786,147				

* Lien position after conversion to permanent. The Department's lien position during construction may vary.

CONDITIONS STATUS

- Receipt and acceptance by HOME Closing:
 - Approved variance for reduced parking or compliance with existing Code, with all required spaces available to tenants at no cost.

Status: Pending

 - Documentation clearing environmental issues contained in the ESA report, specifically:
 - Noise Assessment documentation and implementation consistent with current HUD guidelines evidencing that the average exterior Day/Night Noise Level ("DNL") at subject site is below 65 decibels and that the average interior DNL in all buildings is below 45 decibels.

Status: Pending
- Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

DEAL SUMMARY

Applicant received a \$786K annual tax credit award and a \$2M HOME loan in the 2015 tax credit cycle as recommended in the prior Report dated June 15, 2015. Carryover documentation package was submitted on November 2, 2015 and the Carryover Agreement was executed by TDHCA on December 17, 2015. The Carryover documentation package contained representations that there were no material changes to the Application since Commitment.

On December 21, 2015, Applicant submitted an amendment request to materially change the design of the development and the capital structure. That request was presented at the March 31, 2016 Board Meeting but was denied. Therefore, this Addendum represents a second Amendment Request from the Applicant.

The amendment request results from Applicant's concern over the feasibility of the Development as originally planned because of deteriorating market conditions in Midland due to the collapse of oil and gas production.

As originally contemplated, the Development was to have 194 units. Of that total, 97 were to be restricted and 97 were to be market rate. In an effort to reduce the Development's market exposure and feasibility risks, Applicant's 1st Amendment Request contemplated a reduction in total units to 140, keeping the originally proposed number of restricted units at 97 and reducing the number of market rate units from 97 to 43 (a 54 unit reduction). This 2nd Amendment Request is still proposing the smaller 140 unit configuration but with an increase in the number of restricted units to 115 and a reduction in the number of market rate units to 25.

Common to the 1st Amendment Request and to this revised request is that Applicant is eliminating 57 two bedroom units and adding 13 efficiency units into the unit mix. Because of this shift towards smaller bedroom sizes, the overall average unit size decreases from 873 square feet to 780 square feet. Total NRA decreases by 60,209 square feet. This shift lowers the overall price point (average rent) downward by \$294/unit, which potentially reduces rental rate risk assuming sufficient demand for the smaller units.

The proposed capital structure has significantly changed with the exception of the TDHCA HOME loan.

While the amounts and terms on the primary debt and equity have changed, the most notable change as presented is the elimination of the City of Midland's \$1.6M hard debt loan. Applicant has stated that the City of Midland is willing to keep its original commitment, but believes that its more recent commitment to pay for 50% of the planned extension of Beal Parkway (a contribution estimated at \$226K) is more valuable. Because the \$1.6M loan no longer exists and as it was being used to qualify as Match for the Department's HOME loan, the Applicant is now indicating that the anticipated property tax savings from the ad valorem tax exemption (50% exemption) will serve as Match.

As indicated in the original Report, REA identified significant risks associated with the Development as it contained 50% market rate units. The Underwriter identified declining rents and occupancies and overall general uncertainty in the Midland economy. The Underwriter at the time identified mitigating factors to some of these risks including the conservative nature of the underwriting and, in general, the risk profile of the Department's HOME loan. Many of the mitigating factors no longer exist such as the DCR, low unemployment and high market occupancies.

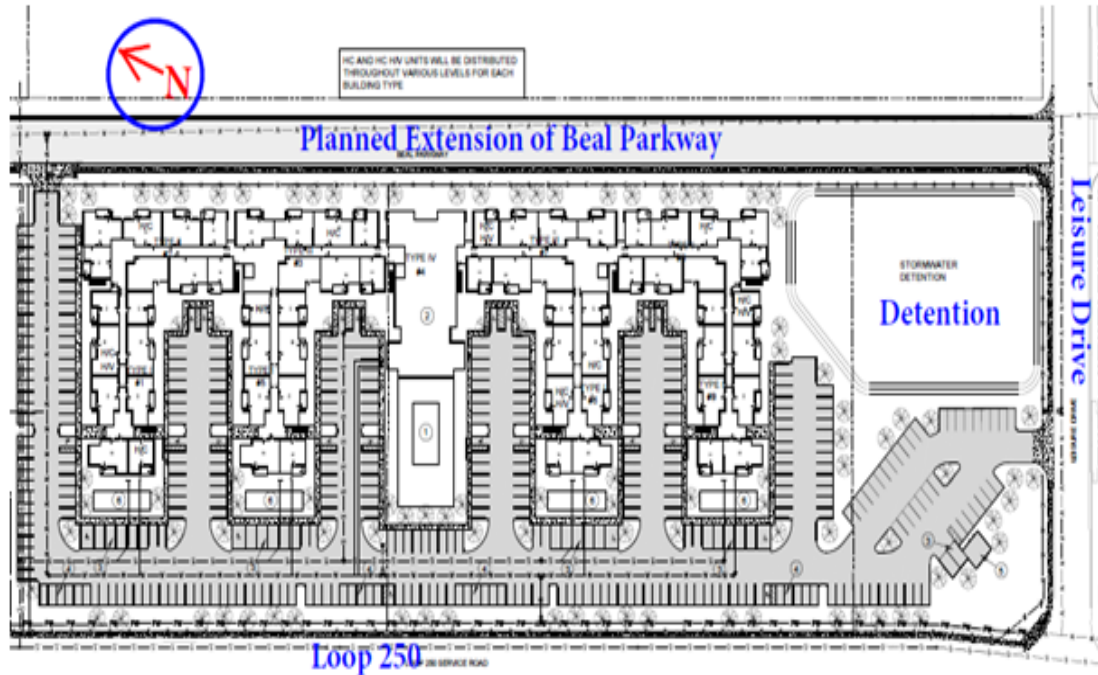
TDHCA#12507, The Azure (formally Champion Homes at Tahoe Lakes) is a 156-unit family property with 125 market rate units (20% HOME units). The property began leasing in February 2015 and is currently 65% occupied (8 units/month lease velocity). REA pro forma rents are similar to the market rents on this property. Most recent leases are \$995 and \$1,295 for one and two bedroom units (property also contains 3 bedroom units). Tenant incomes on this property are as high as \$142K/year.

Although the reduction of the number of market units decreases market risk, the overall risk profile on the Department's HOME loan increases with the amendment. Concerns over the Midland rental market remain as rental rates and occupancies continue to decline. The underwritten DCR on the HOME loan has decreased and both the loan amount per unit and loan to total cost increased.

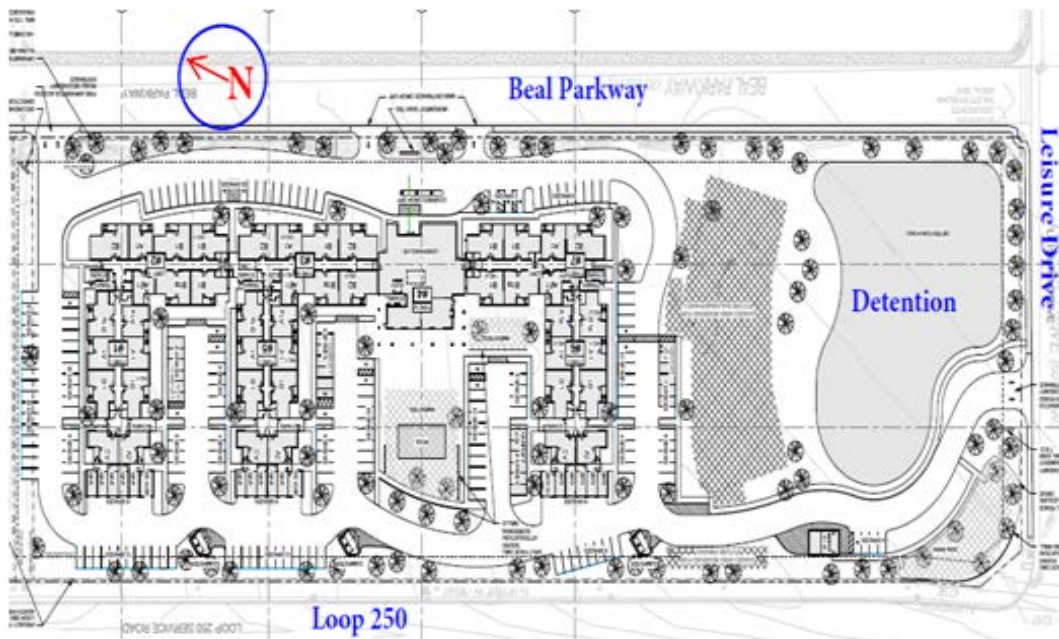
The proposed capital structure includes primary debt as a FHA 221(d)(4) with CitiBank as originator. The formal concept meeting with HUD has not occurred. Applicant provided a timeline for FHA processing and closing based on another transaction that would suggest a potential closing of the financing in September if approved. Based on the delay in getting these proposed changes approved, a September close now seems aggressive. In any event, the Development must be placed in service by December of 2017.

DESIGN CHANGES

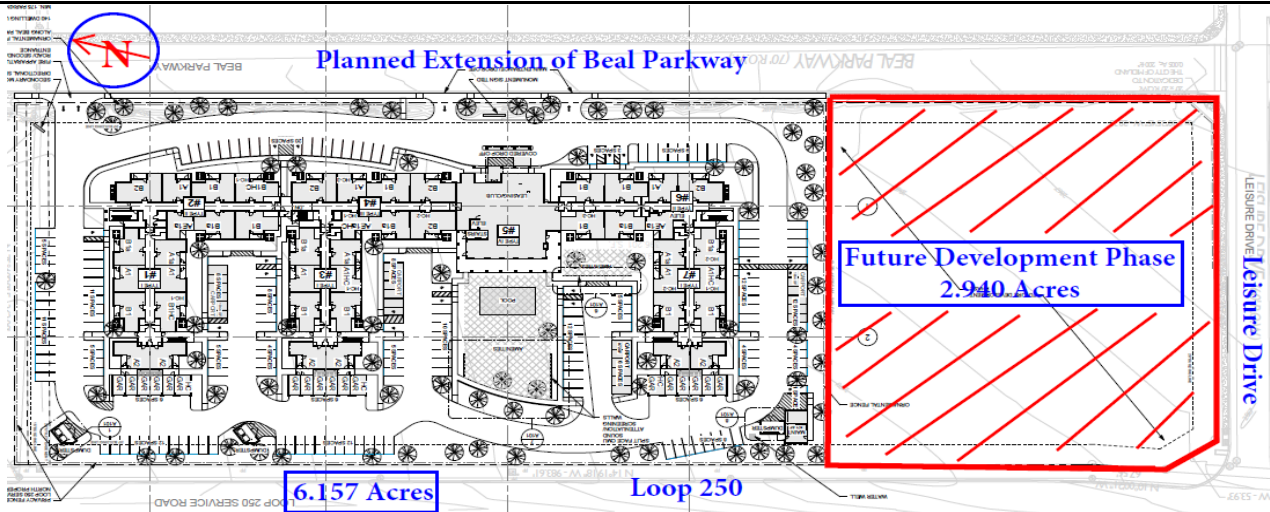
ORIGINAL SITE PLAN



1ST AMENDED SITE PLAN



2ND AMENDED SITE PLAN



Comments:

Amended site plan provided in this request shows a hashed area labeled "Future Development Phase". While part of the original application and the 1st Amendment Request, the contemplated site has now been reduced to 6.157 acres and does not include acquisition of the 2.94 acres shown in the hashed area of the site plan. No information was provided regarding a future phase and one is not contemplated in the amendment request.

Applicant stated that their civil engineer recently found out from the City that a regional detention basin applies to this site that precludes on-site detention. It is a playa lake owned and maintained by the City that is about 1.5 miles southeast of the site between W. Wall St. and E. IH20.

ORIGINAL BUILDING CONFIGURATION												
Building Type	1	2	3	4	5	6	7	8	9			Total Buildings
Floors/Stories	3	3	3	3	3	3	3	3	3			
Number of Bldgs	1	1	1	1	1	1	1	1	1			9
Units per Bldg	24	24	21	8	24	24	21	24	24			
Total Units	24	24	21	8	24	24	21	24	24			194
											Average Unit Size	873 sf
											Net Rentable SF	169,420
											Common Area SF	8,977

AMENDED BUILDING CONFIGURATION (Same as 1st Amendment Request)												
Building Type	1	2	3	4	5	6	7					Total Buildings
Floors/Stories	3	3	3	3	3	3	3					
Number of Bldgs	1	1	1	1	1	1	1					7
Units per Bldg	24	24	24	20	20	21	7					
Total Units	24	24	24	20	20	21	7					140
											Average Unit Size	780 sf
											Net Rentable SF	109,211
											Common Area SF	7,191

Comments:

A single, three-story, elevator served structure sectioned into seven buildings (previously nine). Total NRA decreased 60,209 square feet (35% decrease). Average unit size decreased 93 square feet due to the shift to smaller bedroom sizes. Common area decreased 1,786 square feet because of the reduced corridors.

UNIT MIX DISTRIBUTION					
	APPLICATION		2ND AMENDMENT (Same as 1st Amendment Request)		CHANGE
# Beds	# Units	% Total	# Units	% Total	# Units
Eff	0	0%	13	9%	13
1	66	34%	56	40%	-10
2	128	66%	71	51%	-57
Total	194	100%	140	100%	-54

INCOME DISTRIBUTION					
	APPLICATION		1ST AMENDMENT		CHANGE
Income	# Units	% Total	# Units	% Total	# Units
30%	10	5%	10	7%	0
50%	20	10%	20	14%	0
60%	67	35%	67	48%	0
MR	97	50%	43	31%	-54
Total	194	100%	140	100%	-54

INCOME DISTRIBUTION					
	APPLICATION		2ND AMENDMENT		CHANGE
Income	# Units	% Total	# Units	% Total	# Units
30%	10	5%	12	9%	2
50%	20	10%	24	17%	4
60%	67	35%	79	56%	12
MR	97	50%	25	18%	-72
Total	194	100%	140	100%	-54

INCOME DISTRIBUTION					
	1ST AMENDMENT		2ND AMENDMENT		CHANGE
Income	# Units	% Total	# Units	% Total	# Units
30%	10	7%	12	9%	2
50%	20	14%	24	17%	4
60%	67	48%	79	56%	12
MR	43	31%	25	18%	-18
Total	140	100%	140	100%	0

SET-ASIDES

TDHCA SET-ASIDES for HTC LURA				
Income Limit	Rent Limit	Number of Units Original Application	Number of Units 1st Amendment	Number of Units 2nd Amendment
30% of AMI	30% of AMI	10	10	12
50% of AMI	50% of AMI	20	20	24
60% of AMI	60% of AMI	67	67	79
Total		97	97	115

TDHCA SET-ASIDES for TDHCA HOME LURA				
Income Limit	Rent Limit	Number of Units Original Application	Number of Units 1st Amendment	Number of Units 2nd Amendment
30% of AMI	30% of AMI	8	8	0
50% of AMI	50% of AMI	20	20	29
60% of AMI	60% of AMI	0	0	0
Total		28	28	29

Comments:

HOME units will float, and will now be restricted at the LH/50% designation only.

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro forma)					
NOI:	\$711,312	Avg. Rent:	\$797	Expense Ratio:	44.4%
Debt Service:	\$553,821	B/E Rent:	\$696	Controllable Expenses:	\$2,531
Net Cash Flow:	\$157,491	UW Occupancy:	92.5%	Property Taxes/Unit:	\$464
Aggregate DCR:	1.28	B/E Occupancy:	81.1%	Program Rent Year:	2015

Market rent conclusions from the original March 2015 Market Study averaged \$1,540/unit (\$1.79/SF). Market rents from the updated January 2016 Market Study averaged \$1,184/unit (\$1.53/SF), a decline of \$356/unit.

In a January 2016 review of stabilized properties in Midland-Odessa, ALN Apartment Data, Inc. reported average rent of \$1,028 vs. average rent in January 2015 of \$1,268, a decline of \$240/unit. Average occupancy was reported at 88%, a 4% decline since January 2015.

In May 2016, REA contacted the comparable properties directly and found that rents and occupancies have continued to trend down since January. Because of the high risk that rents will continue to erode, REA's underwritten rents were set at approximately 6% to 12% below the current average market rents for the one and two bedroom units, respectively. There are no market comparable efficiency units.

Applicant also took a more conservative approach in budgeting market unit rents, essentially matching REA's assumptions. Moreover, given the proposed capital structure, the deal remains feasible even if all market rate units only achieve 60% maximum program rents.

TDHCA#13016 Westridge Seniors (located across the street from the subject) contains 96 units, of which 84 are restricted. According to CMTS records, the property is fully occupied and achieving the maximum LIHTC rents. The property is not, however, achieving any rent premiums on the market units over 60% rent limits. If the subject was to only achieve 60% rents, the DCR would still remain feasible at 1.18, with projected 15-year cash flow at a surplus of \$1.7M over deferred developer fee.

Assuming that the underwritten rents are achievable, overall feasibility indicators (expense ratio and breakevens) are positive. DCR on the HOME debt is up to 1.28 (vs. the original 1.25 or the 1.17 reflected in the 1st Amendment Request). This dynamic is a result of lower assumed permanent debt made possible by lower land acquisition cost and lower budgeted building cost.

DEVELOPMENT COST EVALUATION

SUMMARY- AS UNDERWRITTEN (Applicant's Costs)					
Acquisition	\$120,398/ac	\$8,790/unit	\$1,230,621	Contractor Fee	\$1,463,287
Off-site + Site Work		\$16,200/unit	\$2,268,061	Soft Cost + Financing	\$2,691,343
Building Cost	\$74.94/sf	\$58,457/unit	\$8,183,982	Developer Fee	\$2,188,407
Contingency	4.68%	\$3,733/unit	\$522,602	Reserves	\$850,000
Total Development Cost		\$138,559/unit	\$19,398,303	Rehabilitation Cost	N/A

As reflected in the 1st Amendment Request, smaller average unit size and a total reduction in NRA resulted in the cost per foot increasing from \$73.49 to \$81.39, which would have exceeded the \$75 per foot threshold used at application for scoring purposes. However, Applicant's revised building cost budget submitted here reflects a \$58K Building Cost per unit (\$74.94 per square foot) that stays within the \$75 per foot threshold. The REA cost estimate is significantly higher at \$81.48 per square foot). If the REA costs prove real, there is sufficient repayable developer fee for deferral to cover the additional cost.

Since the 1st Amendment Request, Applicant was able to negotiate the purchase of less acreage (6.2 vs. 9.1 acres) at a reduced cost (\$1.2M vs. \$2.0M). Consequently, per unit land cost decreased to \$8.8K (vs. the original \$10.3K or the \$14.3K per unit in the 1st Amendment Request). For a 2016 application, the Applicant has contracted for an adjacent parcel from the same seller for \$7,623/unit [104-unit, general population development].

With 140 units on 6.157 acres, proposed density is 22.7 units/acre. Originally, proposed density was 21.3 units /acre (194 units on 9.1 acres), while density proposed in the 1st Amendment Request was 15.4 units/acre (140 units on 9.1 acres).

UNDERWRITTEN CAPITALIZATION

INTERIM SOURCES				
Funding Source	Description	Amount	Rate	LTC
TDHCA	HOME	\$2,000,000	3.00%	12%
CITI	Conventional/FHA	\$8,300,000	4.25%	50%
CITI Bridge Loan	Conventional Loan	\$2,971,365	2.70%	18%
RBC	HTC	\$1,634,842	\$1.04	10%
DDC Investments, Ltd	Deferred Fee	\$1,561,922	0.00%	9%
		\$16,468,129	Total Sources	

PERMANENT SOURCES

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
CITIBANK/FHA 221(d)(4)	\$8,300,000	4.25%	40	40	\$8,300,000	4.25%	40	40	43%
TDHCA	\$2,000,000	3.00%	40	40	\$2,000,000	3.00%	30	40	10%
City of Midland (50% of Road Cost)	\$225,861	0.00%	0	0	\$225,861	0.00%	0	0	1%
Total	\$10,525,861				\$10,525,861				

Comments:

As underwritten, TDHCA's HOME loan maintains a required 30 year amortization and 3.00% rate per the NOFA. While not affecting payments, the term has been extended to match the contemplated permanent 40-year loan.

TDHCA's Home loan requires a match component provided by the Applicant. Previously, the below-market financing on the City of Midland loan was used as match. As this request does not assume City financing, the Applicant is using the property tax exemption as match. The interest rate on the 221(d)(4) is 4.25% plus .25% MIP [pursuant to correspondence from the lender].

Debt per unit on the TDHCA HOME loan decreased from the original \$10,309 (194 units) to \$8,790 (140 units). Debt coverage improved slightly from 1.25 originally to 1.28. TDHCA loan to total cost increased from an original 7% to 10%.

As in the 1st Amendment Request, the proposed Capital structure no longer includes a \$1.6M loan from the City of Midland. The City indicated on January 12, 2016 that although they committed to a loan to assist in qualifying for the tax credits, the Applicant "...has since qualified for the program and no longer needs the loan that was established last year". The loan qualified the Application for 14 points as development funding by a local political subdivision.

At the same time, the City approved spending an estimated \$226K representing half of the costs of the street improvements adjacent to and serving the site. Previously, the City had only indicated that they would consider reimbursing up to \$95K for improvements (page 4 of the feasibility report). The resolution states that the roadway agreement authorized by the resolution may "...allow the Developer to qualify for certain points..." and that the City intends for the agreement to comply with the QAP.

Concern expressed about the \$1.6M loan prompted the Applicant to get another Resolution from the City (effective 4/27/2016) that restates their original commitment to provide that financing. However, the reason Applicant is currently not proposing to borrow that money since the incremental interest savings afforded by that below market rate loan would only amount to an estimated NPV of \$37K, and therefore be worth far less than the City's commitment to pay an estimated \$226K for half of the cost to build the road.

Adding the City's \$1.6M to the currently proposed capital structure would also result in the deal being over sourced. To rectify that, TDHCA's HOME loan would be reduced from \$2M down to \$1.6M pursuant to the REA rules. This would result in there being no deferred developer fee. Consequently, there would be a reduction in equity needed (from \$8.2M to \$7.8M), and this would result in a \$48K annual reduction in the credit recommendation (from \$786K to \$738K).

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
RBC	\$8,174,212	\$1.04		\$8,174,212	\$1.04	42%	
DDC Investments, Ltd	\$698,229		32%	\$698,229		4%	32%
Total	\$8,872,441			\$8,872,441			
				\$19,398,302	Total Sources		

Comments:

Although total development costs decreased \$8.8M over the original Application and by \$2M over the 1st Amendment Request, the higher applicable fraction of 82% actually results in an increase in eligible basis to \$13.7M (vs. \$11.7M at Application and \$12M in the 1st Amendment Request). Increased basis facilitates the \$8.2M in equity proceeds at the relatively high credit price of \$1.04.

CONCLUSIONS

Recommended Financing Structure:

Gap Analysis:	
Total Development Cost	\$19,398,302
Permanent Sources	\$10,525,861
Gap in Permanent Financing	\$8,872,441

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$10,765,712	\$1,035,382
Needed to Fill Gap in Financing	\$8,872,441	\$853,299
Requested by Applicant	\$8,174,212	\$786,147

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
Tax Credit Allocation	\$8,174,212	\$786,147

	Amount	Interest Rate	Amort	Term	Lien
TDHCA HOME Loan	\$2,000,000	3%	30	40	2nd

Deferred Developer Fee	\$698,229	(32% deferred)
Repayable in	5 years	

Comments:

As underwritten, the originally recommended credit allocation remains unchanged, as does the amount, required rate and amortization of the HOME loan. The recommended 40 year term is only for the purpose of matching the permanent debt.

Underwriter: Gregg Kazak

Manager of Real Estate Analysis: Thomas Cavanagh

Director of Real Estate Analysis: Brent Stewart

UNIT MIX/RENT SCHEDULE

Merritt Leisure, Midland, 9% HTC/HOME #15234

LOCATION DATA	
CITY:	Midland
COUNTY:	Midland
PROGRAM REGION:	12
PIS Date:	On or After 2/1/2014
IREM REGION:	NA

UNIT DISTRIBUTION		
# Beds	# Units	% Total
Eff	13	9.3%
1	56	40.0%
2	71	50.7%
3	-	0.0%
4	-	0.0%
TOTAL	140	100.0%

Applicable Programs
9% Housing Tax Credits
HOME

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	100%
Applicable Fraction	81.85%
APP % Acquisition	3.35%
APP % Construction	7.87%
Average Unit Size	780 sf

UNIT MIX / MONTHLY RENT SCHEDULE																						
HTC		HOME (Rent / Income)		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mkt Analyst		
TC 30%	\$380	LH/50%	\$633	1	0	1	556	\$380	\$57	\$323	\$0	\$0.58	\$323	\$323	\$323	\$323	\$0.58	\$0	\$815	\$1.47	\$915	
TC 50%	\$633	0%		2	0	1	556	\$633	\$57	\$576	\$0	\$1.04	\$576	\$1,152	\$1,152	\$576	\$1.04	\$0	\$815	\$1.47	\$915	
TC 60%	\$760	0%		8	0	1	556	\$760	\$57	\$703	\$0	\$1.26	\$703	\$5,624	\$5,624	\$703	\$1.26	\$0	\$815	\$1.47	\$915	
MR		0%		2	0	1	556	\$0	\$57		NA	\$1.47	\$815	\$1,630	\$1,631	\$815	\$1.47	NA	\$815	\$1.47	\$915	
TC 30%	\$407	LH/50%	\$678	3	1	1	664	\$407	\$65	\$342	\$0	\$0.52	\$342	\$1,026	\$1,026	\$342	\$0.52	\$0	\$983	\$1.48	\$1,105	
TC 50%	\$678	LH/50%	\$678	1	1	1	664	\$678	\$65	\$613	\$0	\$0.92	\$613	\$613	\$613	\$613	\$0.92	\$0	\$983	\$1.48	\$1,105	
TC 60%	\$814	0%		3	1	1	664	\$814	\$65	\$749	\$0	\$1.13	\$749	\$2,247	\$2,247	\$749	\$1.13	\$0	\$983	\$1.48	\$1,105	
MR		0%		2	1	1	664	\$0	\$65		NA	\$1.51	\$1,005	\$2,010	\$1,967	\$983	\$1.48	NA	\$983	\$1.48	\$1,105	
TC 30%	\$407	LH/50%	\$678	1	1	1	686	\$407	\$65	\$342	\$0	\$0.50	\$342	\$342	\$342	\$342	\$0.50	\$0	\$998	\$1.45	\$1,121	
TC 50%	\$678	LH/50%	\$678	3	1	1	686	\$678	\$65	\$613	\$0	\$0.89	\$613	\$1,839	\$1,839	\$613	\$0.89	\$0	\$998	\$1.45	\$1,121	
TC 60%	\$814	0%		10	1	1	686	\$814	\$65	\$749	\$0	\$1.09	\$749	\$7,490	\$7,490	\$749	\$1.09	\$0	\$998	\$1.45	\$1,121	
MR		0%		4	1	1	686	\$0	\$65		NA	\$1.49	\$1,021	\$4,084	\$3,991	\$998	\$1.45	NA	\$998	\$1.45	\$1,121	
TC 30%	\$407	0%		1	1	1	691	\$407	\$65	\$342	\$0	\$0.49	\$342	\$342	\$342	\$342	\$0.49	\$0	\$1,001	\$1.45	\$1,125	
TC 30%	\$407	LH/50%	\$678	1	1	1	691	\$407	\$65	\$342	\$0	\$0.49	\$342	\$342	\$342	\$342	\$0.49	\$0	\$1,001	\$1.45	\$1,125	
TC 50%	\$678	0%		1	1	1	691	\$678	\$65	\$613	\$0	\$0.89	\$613	\$613	\$613	\$613	\$0.89	\$0	\$1,001	\$1.45	\$1,125	
TC 50%	\$678	LH/50%	\$678	4	1	1	691	\$678	\$65	\$613	\$0	\$0.89	\$613	\$2,452	\$2,452	\$613	\$0.89	\$0	\$1,001	\$1.45	\$1,125	
TC 60%	\$814	0%		19	1	1	691	\$814	\$65	\$749	\$0	\$1.08	\$749	\$14,231	\$14,231	\$749	\$1.08	\$0	\$1,001	\$1.45	\$1,125	
MR		0%		3	1	1	691	\$0	\$65		NA	\$1.48	\$1,025	\$3,075	\$3,004	\$1,001	\$1.45	NA	\$1,001	\$1.45	\$1,125	
TC 30%	\$488	LH/50%	\$813	1	2	1	850	\$488	\$85	\$403	\$0	\$0.47	\$403	\$403	\$403	\$403	\$0.47	\$0	\$1,093	\$1.29	\$1,228	
TC 50%	\$813	LH/50%	\$813	3	2	1	850	\$813	\$85	\$728	\$0	\$0.86	\$728	\$2,184	\$2,184	\$728	\$0.86	\$0	\$1,093	\$1.29	\$1,228	
TC 60%	\$976	0%		10	2	1	850	\$976	\$85	\$891	\$0	\$1.05	\$891	\$8,910	\$8,910	\$891	\$1.05	\$0	\$1,093	\$1.29	\$1,228	
MR		0%		4	2	1	850	\$0	\$85		NA	\$1.27	\$1,078	\$4,312	\$4,372	\$1,093	\$1.29	NA	\$1,093	\$1.29	\$1,228	
TC 30%	\$488	0%		1	2	1	880	\$488	\$85	\$403	\$0	\$0.46	\$403	\$403	\$403	\$403	\$0.46	\$0	\$1,113	\$1.26	\$1,250	
TC 30%	\$488	LH/50%	\$813	2	2	1	880	\$488	\$85	\$403	\$0	\$0.46	\$403	\$806	\$806	\$403	\$0.46	\$0	\$1,113	\$1.26	\$1,250	
TC 50%	\$813	0%		1	2	1	880	\$813	\$85	\$728	\$0	\$0.83	\$728	\$728	\$728	\$728	\$0.83	\$0	\$1,113	\$1.26	\$1,250	
TC 50%	\$813	LH/50%	\$813	6	2	1	880	\$813	\$85	\$728	\$0	\$0.83	\$728	\$4,368	\$4,368	\$728	\$0.83	\$0	\$1,113	\$1.26	\$1,250	
TC 60%	\$976	0%		22	2	1	880	\$976	\$85	\$891	\$0	\$1.01	\$891	\$19,602	\$19,602	\$891	\$1.01	\$0	\$1,113	\$1.26	\$1,250	
MR		0%		7	2	1	880	\$0	\$85		NA	\$1.25	\$1,100	\$7,700	\$7,788	\$1,113	\$1.26	NA	\$1,113	\$1.26	\$1,250	
TC 30%	\$488	0%		1	2	2	1,000	\$488	\$85	\$403	\$0	\$0.40	\$403	\$403	\$403	\$403	\$0.40	\$0	\$1,291	\$1.29	\$1,450	
TC 50%	\$813	LH/50%	\$813	3	2	2	1,000	\$813	\$85	\$728	\$0	\$0.73	\$728	\$2,184	\$2,184	\$728	\$0.73	\$0	\$1,291	\$1.29	\$1,450	
TC 60%	\$976	0%		7	2	2	1,000	\$976	\$85	\$891	\$0	\$0.89	\$891	\$6,237	\$6,237	\$891	\$0.89	\$0	\$1,291	\$1.29	\$1,450	
MR		0%		3	2	2	1,000	\$0	\$85		NA	\$1.30	\$1,300	\$3,900	\$3,872	\$1,291	\$1.29	NA	\$1,291	\$1.29	\$1,450	
TOTALS/AVERAGES:				140				109,211				\$0	\$1.02	\$797	\$111,575	\$111,487	\$796	\$1.02	\$0	\$1,054	\$1.35	\$1,184

ANNUAL POTENTIAL GROSS RENT:	\$1,338,900	\$1,337,841
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STABILIZED PRO FORMA

Merritt Leisure, Midland, 9% HTC/HOME #15234

STABILIZED FIRST YEAR PRO FORMA															
COMPARABLES			APPLICANT				PRIOR REPORT			TDHCA				VARIANCE	
Database	Other		% EGI	Per SF	Per Unit	Amount	Amount	Amount	Amount	Per Unit	Per SF	% EGI	%	\$	
POTENTIAL GROSS RENT			\$1.02	\$797	\$1,338,900	\$2,540,556	\$2,483,898	\$1,337,841	\$796	\$1.02			0.1%	\$1,059	
App & Late Fees, Laundry, etc.					\$12.00	\$20,160	27,936								
Parking (Covered Spaces)					\$13.93	\$23,400	28,308								
Total Secondary Income					\$25.93			46,560	\$33,600	\$20.00			29.6%	\$9,960	
POTENTIAL GROSS INCOME						\$1,382,460	\$2,596,800	\$2,530,458	\$1,371,441				0.8%	\$11,019	
Vacancy & Collection Loss				7.5% PGI	(103,685)	(194,760)	(189,784)	(102,858)	7.5% PGI				0.8%	(826)	
Rental Concessions					-								0.0%	-	
EFFECTIVE GROSS INCOME						\$1,278,776	\$2,402,040	\$2,340,674	\$1,268,583				0.8%	\$10,192	

General & Administrative	\$39,312	\$281/Unit	\$36,402	\$260	3.67%	\$0.43	\$335	\$46,964	\$54,500	\$50,963	\$46,964	\$335	\$0.43	3.70%	0.0%	-
Management	\$48,050	5.3% EGI	\$51,111	\$365	5.00%	\$0.59	\$457	\$63,939	\$120,102	\$117,034	\$63,429	\$453	\$0.58	5.00%	0.8%	510
Payroll & Payroll Tax	\$146,319	\$1,045/Unit	\$156,825	\$1,120	12.07%	\$1.41	\$1,102	\$154,306	\$314,985	\$314,985	\$154,306	\$1,102	\$1.41	12.16%	0.0%	-
Repairs & Maintenance	\$77,746	\$555/Unit	\$79,427	\$567	6.02%	\$0.71	\$550	\$77,000	\$106,700	\$106,700	\$77,000	\$550	\$0.71	6.07%	0.0%	-
Electric/Gas	\$31,200	\$223/Unit	\$17,379	\$124	1.62%	\$0.19	\$148	\$20,711	\$37,085	\$24,330	\$20,711	\$148	\$0.19	1.63%	0.0%	-
Water, Sewer, & Trash	\$90,481	\$646/Unit	\$54,353	\$388	4.33%	\$0.51	\$395	\$55,309	\$61,386	\$76,095	\$54,914	\$392	\$0.50	4.33%	0.7%	395
Property Insurance	\$32,386	\$0.30 /sf	\$34,556	\$247	2.85%	\$0.33	\$260	\$36,400	\$53,350	\$48,411	\$34,556	\$247	\$0.32	2.72%	5.3%	1,844
Property Tax 1.9032	\$54,713	\$391/Unit	\$60,089	\$429	5.08%	\$0.59	\$464	\$64,923	\$140,290	\$121,660	\$73,872	\$528	\$0.68	5.82%	-12.1%	(8,949)
Reserve for Replacements	\$41,365	\$295/Unit	\$36,156	\$258	2.74%	\$0.32	\$250	\$35,000	\$48,500	\$48,500	\$35,000	\$250	\$0.32	2.76%	0.0%	-
Supportive Services			\$3,208	\$23	0.47%	\$0.05	\$43	\$6,000	\$25,000	\$25,000	\$6,000	\$43	\$0.05	0.47%	0.0%	-
TDHCA Compliance fees			\$4,007	\$29	0.44%	\$0.05	\$40	\$5,586	\$4,832	\$4,832	\$5,586	\$40	\$0.05	0.44%	0.0%	-
Security			\$4,516	\$32	0.10%	\$0.01	\$9	\$1,325	\$2,000	\$2,000	\$1,325	\$9	\$0.01	0.10%	0.0%	-
TOTAL EXPENSES			\$ 590,513		44.38%	\$5.20	\$4,053	\$567,463	\$968,730	\$940,509	\$ 573,663	\$4,098	\$5.25	45.22%	-1.1%	\$ (6,200)
NET OPERATING INCOME ("NOI")			\$ -		55.62%	\$6.51	\$5,081	\$711,312	\$1,433,310	\$1,400,164	\$694,920	\$4,964	\$6.36	54.78%	2.4%	\$ 16,392

CONTROLLABLE EXPENSES								\$2,531/Unit		\$2,962/Unit	\$2,954/Unit		\$2,528/Unit	
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CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Merritt Leisure, Midland, 9% HTC/HOME #15234

DEBT / GRANT SOURCES																								
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE														
DEBT (Must Pay)	MIP	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	1st Amendment Request 3/15/2016	Original Underwriting 6/15/2015		1st Amendment Request 3/15/2016	Principal	Term	Amort	Rate	Pmt	Cumulative						
		Applicant	Applicant						TDHCA	TDHCA	DCR	LTC												
CITIBANK - FHA 221(d)(4)	0.25%	1.61	1.65	431,886	4.25%	40	40	\$8,300,000	\$10,200,000	\$16,400,000	\$16,400,000	\$10,200,000	\$8,300,000	40	40	4.25%	\$452,636	1.57	42.8%					
TDHCA		1.34	1.37	85,916	3.00%	40	40	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	40	30	3.00%	\$101,185	1.28	10.3%					
City of Midland		1.34	1.37	-	0.00%	0	0	\$0	\$0	\$1,076,772	\$1,600,000	\$0	\$0	0	0	0.00%	-	1.28	0.0%					
CASH FLOW DEBT / GRANTS																								
City of Midland (50% of Road Cost)		1.34	1.37	-	0.00%	0	0	\$225,861	\$0	\$0	\$0	\$0	\$225,861	0	0	0.00%	-	1.28	1.2%					
City of Midland MATCH funds (HOME)		1.34	1.37	-	0.00%	0	0	\$0	\$0	\$523,228	\$0	\$0	\$0	0	0	0.00%	-	1.28	0.0%					
									\$517,802	TOTAL DEBT / GRANT SOURCES				\$10,525,861	\$12,200,000	\$20,000,000	\$20,000,000	\$12,200,000	\$10,525,861	TOTAL DEBT SERVICE		\$553,821	1.28	54.3%
NET CASH FLOW		\$177,118	\$193,510														NET OPERATING INCOME		\$711,312	\$157,491	NET CASH FLOW			

EQUITY SOURCES																
APPLICANT'S PROPOSED EQUITY STRUCTURE								AS UNDERWRITTEN EQUITY STRUCTURE								
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	1st Amendment Request 3/15/2016	Original Underwriting 6/15/2015		1st Amendment Request 3/15/2016	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Total Developer Fee:	15-Year Cash Flow:
						Applicant	Applicant	TDHCA	TDHCA							
RBC	LIHTC Equity	42.1%	\$786,147	1.04	\$8,174,212	\$8,174,212	\$7,545,502	\$7,545,502	\$8,174,212	\$8,174,212	\$1.04	\$786,147	42.1%	\$5,615		
DDC Investments, Ltd	Deferred Developer Fees	3.6%	(32% Deferred)		\$698,229	\$1,084,407	\$673,071	\$673,070	\$1,084,409	\$698,229	(32% Deferred)		3.6%		\$2,188,406	
Additional (Excess) Funds Req'd		0.0%			\$0	\$2	\$0	\$0	\$0	\$0			0.0%			
TOTAL EQUITY SOURCES		45.7%			\$8,872,441	\$9,258,621	\$8,218,572	\$8,218,572	\$9,258,621	\$8,872,441			45.7%		\$3,362,088	
TOTAL CAPITALIZATION					\$19,398,302	\$21,458,621	\$28,218,572	\$28,218,572	\$21,458,621	\$19,398,302					15-Yr Cash Flow after Deferred Fee:	\$2,663,858

DEVELOPMENT COST / ITEMIZED BASIS																
APPLICANT COST / BASIS ITEMS							TDHCA COST / BASIS ITEMS							COST VARIANCE		
Eligible Basis	Acquisition	New Const. Rehab	Total Costs	1st Amendment Request 3/15/2016	Original Underwriting 6/15/2015		1st Amendment Request 3/15/2016	Total Costs	New Const. Rehab	Acquisition	%	\$				
				Applicant	Applicant	TDHCA	TDHCA									
Land Acquisition			\$7,826 / Unit \$1,095,621	\$1,966,882	\$1,966,882	\$1,966,882	\$1,966,882	\$1,095,621	\$7,826 / Unit		0.0%	\$0				
Building Acquisition	\$0		\$ / Unit \$0	\$0	\$0	\$0	\$0	\$0	\$ / Unit	\$0	0.0%	\$0				
Closing costs & acq. legal fees, Extensions			\$135,000	\$35,000	\$35,000	\$35,000	\$35,000	\$135,000								
Off-Sites		\$0	\$3,821 / Unit \$534,972	\$356,875	\$519,920	\$519,920	\$519,920	\$534,972	\$3,821 / Unit	\$0	0.0%	\$0				
Site Work		\$1,311,339	\$9,367 / Unit \$1,311,339	\$1,627,788	\$1,803,700	\$1,803,700	\$1,803,700	\$1,311,339	\$9,367 / Unit	\$1,311,339	0.0%	\$0				
Site Amenities		\$421,750	\$3,013 / Unit \$421,750	\$512,400	\$665,544	\$665,544	\$665,544	\$421,750	\$3,013 / Unit	\$421,750	0.0%	\$0				
Building Cost		\$8,134,883	\$74.94 /sf \$58,457/Unit \$8,183,982	\$8,888,972	\$12,450,423	\$12,489,561	\$12,489,561	\$8,898,489	\$63,561/Unit \$81.48 /sf	\$8,774,294	-8.0%	(\$714,507)				
Contingency		\$493,399	5.00% 5.00% \$522,602	\$569,302	\$771,979	\$771,979	\$771,979	\$522,602	4.68% 4.70%	\$493,399	0.0%	\$0				
Contractor Fees		\$1,381,515	13.33% 13.33% \$1,463,287	\$1,594,045	\$2,161,542	\$2,161,542	\$2,161,542	\$1,463,287	12.52% 12.56%	\$1,381,515	0.0%	\$0				
Soft Costs	0	\$1,254,736	\$9,105 / Unit \$1,274,736	\$1,024,736	\$1,297,955	\$1,297,955	\$1,297,955	\$1,274,736	\$9,105 / Unit	\$1,254,736	0.0%	\$0				
Financing	0	\$978,480	\$10,119 / Unit \$1,416,607	\$1,661,607	\$2,323,782	\$2,323,782	\$2,323,782	\$1,416,607	\$10,119 / Unit	\$978,480	0.0%	\$0				
Developer Fee	\$0	\$2,096,415	15.00% 15.00% \$2,188,407	\$2,332,314	\$3,121,845	\$3,121,845	\$3,121,845	\$2,188,406	14.30% 14.34%	\$2,096,415	0.0%	\$1				
Reserves			\$6,071 / Unit \$850,000	\$888,700	\$1,100,000	\$1,085,683	\$1,085,683	\$563,742	\$4,027 / Unit		50.8%	\$286,258				
UNADJUSTED DEVELOPMENT COST / ELIGIBLE BASIS		\$0	\$16,072,517	\$138,559 / Unit	\$19,398,302	\$21,458,621	\$28,218,572	\$28,243,393	\$19,826,552	\$141,618 / Unit	\$16,711,928	\$0	-2.2%	(\$428,249)		
Acquisition Cost	\$0			\$0												
Contingency		\$0														
Contractor's Fee		\$0														
Interim Interest		\$0														
Developer Fee	\$0	\$0		(\$1)												
Reserves				\$0												
TOTAL HOUSING DEVELOPMENT COST / ELIGIBLE BASIS		\$0	\$16,072,517	\$138,559/unit	\$19,398,302	\$21,458,621	\$28,218,572	\$28,243,393	\$19,826,552	\$141,618/unit	\$16,711,928	\$0	-2.2%	(\$428,249)		
TOTAL HOUSING DEVELOPMENT COST (Applicant's Uses are within 5% of TDHCA Estimate):							\$19,398,302									

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Merritt Leisure, Midland, 9% HTC/HOME #15234

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	\$0	\$16,072,517	\$0	\$16,711,928
Deduction of Federal Grants	\$0	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$16,072,517	\$0	\$16,711,928
High Cost Area Adjustment		100%		100%
TOTAL ADJUSTED BASIS	\$0	\$16,072,517	\$0	\$16,711,928
Applicable Fraction	81.85%	81.85%	81.85%	81.85%
TOTAL QUALIFIED BASIS	\$0	\$13,156,061	\$0	\$13,679,447
Applicable Percentage	3.35%	7.87%	3.35%	7.87%
ANNUAL CREDIT ON BASIS	\$0	\$1,035,382	\$0	\$1,076,572
CREDITS ON QUALIFIED BASIS	\$1,035,382		\$1,076,572	

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$1.0398	Variance to Request	
			Credit Allocation	Credits	Proceeds
Eligible Basis	\$1,035,382	\$10,765,712	----	----	----
Gap	\$853,299	\$8,872,441	----	----	----
Applicant Request	\$786,147	\$8,174,212	\$786,147	\$0	\$0

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:	Wrap Style (3 or 4-story)	109,211 SF	\$66.61	7,274,897
Adjustments				
Exterior Wall Finish	2.40%		1.60	\$174,598
Elderly	3.00%		2.00	218,247
g'	0.00%		0.00	0
Roofing			(0.25)	(27,303)
Subfloor			(0.12)	(12,741)
Floor Cover			3.57	389,916
Breezeways	\$0.00	0	0.00	0
Balconies	\$22.36	12,154	2.49	271,717
Plumbing Fixtures	\$970	42	0.37	40,740
Rough-ins	\$475	280	1.22	133,000
Built-In Appliances	\$1,790	140	2.29	250,600
Exterior Stairs	\$2,425	15	0.33	36,375
Heating/Cooling			2.11	230,435
Enclosed Corridors	\$50.40	36,168	16.69	1,822,984
Carports	\$11.82	3,132	0.34	37,020
Garages	\$30.07	4,380	1.21	131,694
Comm &/or Aux Bldgs	\$75.26	7,191	4.96	541,209
Elevators	\$66,000	3	1.81	198,000
Other:	\$0.00	0	0.00	0
Fire Sprinklers	\$2.47	152,570	3.45	376,848
SUBTOTAL			110.69	12,088,236
Current Cost Multiplier	0.99		(1.44)	(157,147)
Local Multiplier	0.88		(13.61)	(1,486,853)
TOTAL BUILDING COSTS			95.63	\$10,444,236
Plans, specs, survey, bldg permits	3.30%		(3.16)	(\$344,660)
Contractor's OH & Profit	11.50%		(11.00)	(1,201,087)
NET BUILDING COSTS		\$63,561/unit	\$81.48/sf	\$8,898,489

40-Year Long-Term Pro Forma

Merritt Leisure, Midland, 9% HTC/HOME #15234

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$1,278,776	\$1,304,351	\$1,330,438	\$1,357,047	\$1,384,188	\$1,528,255	\$1,687,317	\$1,862,934	\$2,056,830	\$2,270,907	\$2,507,264	\$2,768,223
TOTAL EXPENSES	3.00%	\$567,463	\$583,848	\$600,711	\$618,067	\$635,931	\$733,398	\$845,992	\$976,080	\$1,126,403	\$1,300,134	\$1,500,945	\$1,733,087
NET OPERATING INCOME ("NOI")		\$711,312	\$720,503	\$729,727	\$738,980	\$748,257	\$794,857	\$841,325	\$886,854	\$930,427	\$970,773	\$1,006,320	\$1,035,136
MUST -PAY DEBT SERVICE													
CITIBANK - FHA 221(d)(4)		\$452,636	\$452,434	\$452,223	\$452,004	\$451,775	\$450,471	\$448,860	\$446,868	\$444,405	\$441,360	\$437,595	\$432,941
TDHCA		\$101,185	\$101,185	\$101,185	\$101,185	\$101,185	\$101,185	\$101,185	\$101,185	\$101,185	\$101,185	\$101,185	\$101,185
City of Midland		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL DEBT SERVICE		\$553,821	\$553,619	\$553,408	\$553,189	\$552,960	\$551,656	\$550,045	\$548,053	\$545,590	\$542,545	\$538,780	\$534,126
ANNUAL CASH FLOW		\$157,491	\$166,884	\$176,318	\$185,791	\$195,297	\$243,201	\$291,280	\$338,802	\$384,837	\$428,228	\$467,540	\$501,010
CUMULATIVE NET CASH FLOW		\$157,491	\$324,376	\$500,694	\$686,485	\$881,782	\$2,001,782	\$3,362,088	\$4,961,447	\$6,794,369	\$8,850,051	\$11,111,085	\$13,551,929
DEBT COVERAGE RATIO		1.28	1.30	1.32	1.34	1.35	1.44	1.53	1.62	1.71	1.79	1.87	1.94
EXPENSE/INCOME RATIO		44.4%	44.8%	45.2%	45.5%	45.9%	48.0%	50.1%	52.4%	54.8%	57.3%	59.9%	62.6%
Deferred Developer Fee Balance		\$540,738	\$373,854	\$197,535	\$11,745	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Residual Cash Flow		0	0	0	\$0	\$183,552	\$243,201	\$291,280	\$338,802	\$384,837	\$428,228	\$467,540	\$501,010

Merritt Leisure
(Development Owner: DDC Merritt Leisure, Ltd)

TDHCA #: 15234

Application 2nd Amendment Request

Primary Contact: Colby Denison
1904 W. 35th Street
Austin, TX 78703
512 732 1226
Email: colby@denisondevelopment.com

Secondary Contact: Stacy Swisher
432 770 7262
Email: Stacyswisher4@gmail.com

CROSSROADS

Housing Development Corporation

April 14th, 2015

Brent Steward

TDHCA

RE: 2nd Amendment Request for Merritt Leisure (TDHCA #15234)

Hello Brent,

Please find enclosed our amendment request for Merritt Leisure. We hope TDHCA and its board will find this request a great improvement to the offering for low income citizens of Midland. This amendment is absolutely required in order to make Merritt Leisure a feasible development. Without 221d4 financing, Merritt Leisure isn't financially feasible given the current state of market rate rents; the heart of the problem in Midland. With the economic decline has come falling market rents. Crossroads, DDC, RBC, Citi and Community Bank of Texas all agree that there is no concern over the affordable units in Midland. The risk and the problem exists with the market rate units; which continue to show deterioration in rents. Reducing the number and % of market rate units is absolutely mandatory to the viability of Merritt Leisure

We believe this amendment represents an improvement to the initial Application for the following reasons:

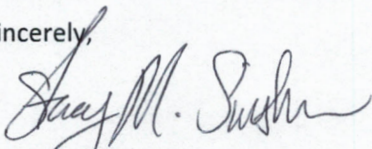
1. We are offering 18 additional low income units; a 16% increase from Application. The total SF of affordable units has increased 5.5%.
2. The average rent for the affordable units has declined from \$747 to \$738; a 1.2% drop. The change to the unit mix broadens our offering to low income residents.
3. The City of Midland is in the midst of an economic slowdown, and for a 100% age restricted development, 2 Bedroom Units are a luxury. Most units are single occupancy, so the extra bedroom tends to be used as a study, a dining room or an extra bedroom for visiting guests. We have decreased the % of 2 Bedroom Units by 11%, and added 6 of efficiency units. We will restrict 100% of the units to 55 years and older.
4. The City of Midland is completely supportive of these changes, and believe they address the City's adopted plan for providing more affordable housing; specifically for seniors. The City has granted increased density to Merritt Leisure as a result of their support of affordable housing. We are also in a concerted revitalization area where the City's investment is having a real impact on the demographics in the area.
5. The City of Midland is willing to keep the original loan it committed to Merritt Leisure, but fervently believes that the commitment to pay for half of the offsite public road is much more valuable. At over \$225,000 as indicated in the latest estimate of shared cost by the certified engineer, the benefit to Merritt Leisure is substantially great than the "below market" loan it originally committed. We expect to close HUD 221d4 financing for Merritt Leisure at 4.25% and a 40-year amortization schedule. The net present value of the benefit of the 3% at 30 years over the 15-year term is just slightly over \$30,000 as indicated in the following calculation. Thus, the road contribution is much, much more valuable.
6. The existence of the City of Midland loan forces Merritt Leisure to use private bank financing from Community Bank of Texas. The terms of that loan are much worse at 5.75% and a 30-year amortization. We have included the financials for that scenario, and show that no additional affordability is possible with this financing. Thus, we have asked TDHCA to recognize the benefits of the HUD financing matched with the road grant. We are not aware of a single instance of a city the size of Midland making a \$225,000 financial contribution in the form of a loan sourced from their general funds to be used in support of affordable housing. The commitment they've made on the road is the largest grant we have seen from a city from it's own funds since we first participated in

the LIHTC program in 2004. We hope TDHCA recognizes the sacrifice and support this represents to Merritt Leisure from a City in the midst of an economic recession. These offsite improvements are not included in Eligible Basis, so no tax credits would be awarded to help support these costs. This further increases the benefit of this grant.

We have included three scenarios for TDHCA to review demonstrating how this amended development could be structured and financed. We have endeavored to select the option that best benefits the population, the tax credit program, and HOME program target. Matching LIHTC, HOME and HUD 221d4 is by far the most attractive structure that does the most for low income residents. Changing the term to 40 years does even more, and we argue that 3% at 30-year amortization is not necessarily a "below market" loan. HUD 221d4 at 4.25% and 40-year amortization is almost identical to a loan at 3% and 30-year amortization in terms of payment burden to the development. So, we hope TDHCA can follow it's RFP on the underwriting side, but grant Merritt Leisure an amortization and term that match the 221d4 program. We are suggesting that we keep the 3% rate. This gives all financial participants in the transaction cushion for further deterioration in the Midland housing market. As is indicated in our market update and the rent roll, rents have declined again since the last submittal of information to TDHCA, and there is reason to believe that they will continue to decline. SO, underwriting to a a minimum 1.15 SDCR does not seem prudent in this case.

Finally, as the Executive Director of a local CHDO, it has been my life's work to help and support those less fortunate with the development and management of affordable housing. I live in Midland and our non-profit is based just outside of Midland in Big Spring. Our own lives have been impacted from the decline in oil prices as my husband is in the oil and gas business, and we strongly urge TDHCA to support the changes that are required of this Application in order to make this development possible. Without these changes, there is little hope of finding a syndication firm willing to invest in the Midland market. Further, HUD has specifically stated it's nervousness over the market rate units, and the proposed reduction reduces the risk to all financing participants while adding affordable housing stock to the area. Because we are using less land, and because the balance of the land is still zoned for multifamily, the City of Midland will get those market rate units at some time in the future. In this latest cycle in the oil and gas business, thousands of new apartments have been added, and many within the immediate and adjacent areas around Merritt Leisure. Market rate housing exists, and there is little doubt that anyone would argue that more is needed; including the City of Midland. Leisure is located in a prime area of redevelopment with lots of amenities for the residents. It is furthering fair housing because of its direct proximity to high incomes.

Sincerely,



Stacy Swisher

Executive Director, Crossroads Housing Development Corporation

Home Address: 2501 Maxwell Dr.

Midland, TX 79705

Rent Schedule

NOTE: We have highlighted the areas that have changed from prior Amendment submission in order to assist TDHCA in their underwriting.

Rent Schedule (Continued)

		% of LI	% of Total	
HOUSING TAX CREDITS	TC30%	10%	9%	12
	TC40%			0
	TC50%	21%	17%	24
	TC60%	69%	56%	79
	HTC LI Total			115
	EO			0
	MR			25
	MR Total			25
	Total Units			140
MORTGAGE REVENUE BOND	MRB30%			0
	MRB40%			0
	MRB50%			0
	MRB60%			0
	MRB LI Total			0
	MRBMR			0
	MRBMR Total			0
	MRB Total			0

		% of LI	% of Total	
HOUSING TRUST FUND	HTF30%			0
	HTF40%			0
	HTF50%			0
	HTF60%			0
	HTF80%			0
	HTF LI Total			0
	MR			0
	MR Total			0
	HTF Total			0
HOME	30%			0
	LH/50%	100%	100%	29
	HH/60%			0
	HH/80%			0
	HOME LI Total			29
	EO			0
	MR			0
	MR Total			0
	HOME Total			29
OTHER	Total OT Units			0

BEDROOMS	0			13
	1			56
	2			71
	3			0
	4			0
	5			0

ACQUISITION + HARD			
Cost Per Sq Ft	\$113.89		
HARD			
Cost Per Sq Ft	\$113.89		
BUILDING			Total Points claimed:
Cost Per Sq Ft	\$ 74.94		12

Applicants are advised to ensure that figure is not rounding down to the maximum dollar figure to support the elected points.

We maintain the cost per SF for scoring purposes.

Operating Expenses

NOTE: We have highlighted the expenses that have changed from prior Amendment submission in order to assist TDHCA in their underwriting.

ANNUAL OPERATING EXPENSES

General & Administrative Expenses			
Accounting	\$	9,600	
Advertising	\$	9,500	
Legal fees	\$	1,000	
Leased equipment	\$	3,464	
Postage & office supplies	\$	5,000	
Telephone	\$	5,400	
Other	\$	11,000	
Other	\$	2,000	
Total General & Administrative Expenses:			\$ 46,964
Management Fee:	Percent of Effective Gross Income:	5.00%	\$ 63,939
Payroll, Payroll Tax & Employee Benefits			
Management	\$	99,791	
Maintenance	\$	73,888	
Other	\$	39,047	
Other	\$		
Total Payroll, Payroll Tax & Employee Benefits:			\$ 212,726
Repairs & Maintenance			
Elevator	\$	9,000	
Exterminating	\$	4,000	
Grounds	\$	23,000	
Make-ready	\$	6,000	
Repairs	\$	29,000	
Pool	\$	2,000	
Other	\$	4,000	
Other	\$		
Total Repairs & Maintenance:			\$ 77,000
Utilities (Enter Only Property Paid Expense)			
Electric	\$	20,711	
Natural gas	\$		
Trash	\$	21,390	
Water/Sewer	\$	33,919	
Other	\$		
Other	\$		
Total Utilities:			\$ 76,020
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.33	\$ 36,400
Property Taxes:			
Published Capitalization Rate:	10.00%	Source:	Property Tax Advocates
Annual Property Taxes	\$	64,923	
Payments in Lieu of Taxes	\$		
Total Property Taxes:			\$ 64,923
Reserve for Replacements:	Annual reserves per unit:	\$ 250	\$ 35,000

More affordable units = lower rent = lower management fees.

Reduced because of increased affordability and thus lower NOI.

Other Expenses				
Cable TV		\$		
Supportive Services (Staffing/Contracted Services)		\$	6,000	
TDHCA Compliance fees		\$	5,586	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer <u>Only</u>)		\$		
Security		\$	1,325	
Other		\$		
Other		\$		
Total Other Expenses:				\$ 12,911
TOTAL ANNUAL EXPENSES	Expense per unit:	\$	4471	\$ 625,883
	Expense to Income Ratio:		48.94%	
NET OPERATING INCOME (before debt service)				\$ 652,893
Annual Debt Service				
	<i>Conventional Loan</i>	\$	431,886	
	<i>TDHCA HOME Funds</i>	\$	85,916	
	<i>City of Midland</i>	\$		
		\$		
TOTAL ANNUAL DEBT SERVICE	Debt Coverage Ratio:		1.26	\$ 517,802
NET CASH FLOW				\$ 135,091

Updated for current Sources and Uses including the increase to 40 year amortization for HOME funds.

Pro Forma

15 Year Rental Housing Operating Pro Forma

All Programs Must Complete the following:

The pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of market rents, restricted rents, rental income and expenses), and principal and interest debt service. The Department uses an annual growth rate of 2% for income and 3% for expenses. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

INCOME	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15
POTENTIAL GROSS ANNUAL RENTAL INCOME	\$1,338,900	\$1,365,678	\$1,392,992	\$1,420,851	\$1,449,268	\$1,600,109	\$1,766,650
Secondary Income	\$ 43,560	\$ 44,431	\$ 45,320	\$ 46,226	\$ 47,151	\$ 52,058	\$ 57,476
POTENTIAL GROSS ANNUAL INCOME	\$1,382,460	\$1,410,109	\$1,438,311	\$1,467,078	\$1,496,419	\$1,652,168	\$1,824,127
Provision for Vacancy & Collection Loss	(\$103,685)	(\$105,758)	(\$107,873)	(\$110,031)	(\$112,231)	(\$123,913)	(\$136,809)
Rental Concessions	\$0						
EFFECTIVE GROSS ANNUAL INCOME	\$1,278,776	\$1,304,351	\$1,330,438	\$1,357,047	\$1,384,188	\$1,528,255	\$1,687,317
EXPENSES							
General & Administrative Expenses	\$46,964	\$48,373	\$49,824	\$51,319	\$52,858	\$61,277	\$71,037
Management Fee	\$ 63,939	\$ 65,857	\$ 67,833	\$ 69,868	\$ 71,964	\$ 83,426	\$ 96,713
Payroll, Payroll Tax & Employee Benefits	\$ 212,726	\$ 219,108	\$ 225,681	\$ 232,451	\$ 239,425	\$ 277,559	\$ 321,767
Repairs & Maintenance	\$ 77,000	\$ 79,310	\$ 81,689	\$ 84,140	\$ 86,664	\$ 100,468	\$ 116,469
Electric & Gas Utilities	\$ 20,711	\$ 21,333	\$ 21,973	\$ 22,632	\$ 23,311	\$ 27,024	\$ 31,328
Water, Sewer & Trash Utilities	\$ 55,309	\$ 56,968	\$ 58,677	\$ 60,437	\$ 62,250	\$ 72,165	\$ 83,659
Annual Property Insurance Premiums	\$ 36,400	\$ 37,492	\$ 38,617	\$ 39,775	\$ 40,969	\$ 47,494	\$ 55,058
Property Tax	\$ 64,923	\$ 66,871	\$ 68,877	\$ 70,943	\$ 73,071	\$ 84,710	\$ 98,202
Reserve for Replacements	\$ 35,000	\$ 36,050	\$ 37,132	\$ 38,245	\$ 39,393	\$ 45,667	\$ 52,941
Other Expenses	\$ 12,911	\$ 13,298	\$ 13,697	\$ 14,108	\$ 14,531	\$ 16,846	\$ 19,529
TOTAL ANNUAL EXPENSES	\$625,883	\$644,659	\$663,999	\$683,919	\$704,436	\$816,635	\$946,704
NET OPERATING INCOME	\$652,893	\$659,692	\$666,439	\$673,128	\$679,751	\$711,620	\$740,613
DEBT SERVICE							
First Deed of Trust Annual Loan Payment	\$431,886	\$431,886	\$431,886	\$431,886	\$431,886	\$431,886	\$431,886
Second Deed of Trust Annual Loan Payment	85,916	85,916	85,916	85,916	85,916	85,916	85,916
Third Deed of Trust Annual Loan Payment	0	0	0	0	0	0	0
Other Annual Required Payment							
Other Annual Required Payment							
NET CASH FLOW	\$135,091	\$141,890	\$148,637	\$155,326	\$161,949	\$193,818	\$222,811
Debt Coverage Ratio	1.26	1.27	1.29	1.30	1.31	1.37	1.43
Other (Describe)							
Other (Describe)							

By signing below I (we) are certifying that the above 15 Year pro forma, rent schedule and operating expense schedule have been reviewed and generally meet current lender underwriting parameters for the loan terms indicated in the term sheet. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)

Phone: _____

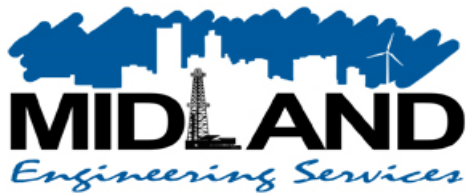
Email: _____

Signature, Authorized Representative, Construction or
Permanent Lender

Printed Name

Date

Off-site Cost



DDC Merritt Leisure
 Lot 1A, Block 162, Wilshire Park, Section 20
 Midland, TX

ENGINEER'S OPINION OF PROBABLE COSTS
 March 29, 2016

Submitted to City for Approval
 with the Resolution for
 Commitment to build road.

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	UNIT COST	TOTAL COST	DEVELOPER SHARE	DEVELOPER COST	MIDLAND SHARE	MIDLAND COST
BEAL PARKWAY PAVING									
1	ROW Preparation	LF	1107	10.00	\$ 11,070.00	50.00%	\$ 5,535.00	50.00%	\$ 5,535.00
2	24" Curb & Gutter	LF	2214	15.00	\$ 33,210.00	50.00%	\$ 16,605.00	50.00%	\$ 16,605.00
3	Excavation	CY	1448.7	5.00	\$ 7,243.33	50.00%	\$ 3,621.67	50.00%	\$ 3,621.67
4	Scarify / Shape / Compact Sub-grade	SY	6519.0	3.50	\$ 22,816.50	50.00%	\$ 11,408.25	50.00%	\$ 11,408.25
5	Base Rock - Bott Lift (Material Only)	TN	1232.1	9.50	\$ 11,704.86	50.00%	\$ 5,852.43	50.00%	\$ 5,852.43
6	Base Rock - Top Lift (Material Only)	TN	1092.6	9.50	\$ 10,379.79	50.00%	\$ 5,189.89	50.00%	\$ 5,189.89
7	Shape / Compact Base Rock - Bottom Lift	SY	6519.0	3.50	\$ 22,816.50	50.00%	\$ 11,408.25	50.00%	\$ 11,408.25
8	Shape / Compact Base Rock - Top Lift	SY	5781.0	3.50	\$ 20,233.50	50.00%	\$ 10,116.75	50.00%	\$ 10,116.75
9	Tack Coat	SY	5781.0	1.00	\$ 5,781.00	50.00%	\$ 2,890.50	50.00%	\$ 2,890.50
10	HMAC (Material Only)	TN	667.7	80.00	\$ 53,416.44	50.00%	\$ 26,708.22	50.00%	\$ 26,708.22
11	Installation of HMAC Surface Course	SY	5781.0	4.00	\$ 23,124.00	50.00%	\$ 11,562.00	50.00%	\$ 11,562.00
12	5' Sidewalk - West Side of Beal	SF	5555.0	6.75	\$ 37,496.25	50.00%	\$ 18,748.13	50.00%	\$ 18,748.13
13	8' Sidewalk - East Side of Beal	SF	8872.0	6.75	\$ 59,886.00	50.00%	\$ 29,943.00	50.00%	\$ 29,943.00
14	Erosion Protection (\$/100 LF)	LS	11.1	1000.00	\$ 11,100.00	50.00%	\$ 5,550.00	50.00%	\$ 5,550.00
15	Construction Staking (\$/100LF)	LS	11.1	500.00	\$ 5,550.00	50.00%	\$ 2,775.00	50.00%	\$ 2,775.00
16	Traffic Control / Job Site Safety (\$/100LF)	LS	11.1	250.00	\$ 2,775.00	50.00%	\$ 1,387.50	50.00%	\$ 1,387.50
17	Contingency (nearest \$100)	%	1.0	15%	\$ 50,800.00	50.00%	\$ 25,400.00	50.00%	\$ 25,400.00
18	Construction Administration (% of Construction Total)	%	1.0	5%	\$ 19,500.00	50.00%	\$ 9,750.00	50.00%	\$ 9,750.00
	Subtotal				\$ 408,903.17	50.00%	\$ 204,451.59	50.00%	\$ 204,451.59
LEISURE DRIVE PAVING									
1	New Pedestrian Ramp	EA	2	2500.00	\$ 5,000.00	50.00%	\$ 2,500.00	50.00%	\$ 2,500.00
2	New 5' Wide Sidewalk, 4" concrete, Leisure Drive	SF	1650	6.75	\$ 11,137.50	50.00%	\$ 5,568.75	50.00%	\$ 5,568.75
3	24" Curb & Gutter	LF	330	15.00	\$ 4,950.00	50.00%	\$ 2,475.00	50.00%	\$ 2,475.00
4	Excavation	CY	97.78	5.00	\$ 488.89	50.00%	\$ 244.44	50.00%	\$ 244.44
5	Scarify / Shape / Compact Sub-grade	SY	440.00	3.50	\$ 1,540.00	50.00%	\$ 770.00	50.00%	\$ 770.00
6	Base Rock - Bott Lift (Material Only)	TN	83.16	9.50	\$ 790.02	50.00%	\$ 395.01	50.00%	\$ 395.01
7	Base Rock - Top Lift (Material Only)	TN	41.58	9.50	\$ 395.01	50.00%	\$ 197.51	50.00%	\$ 197.51
8	Shape / Compact Base Rock - Bottom Lift	SY	440.00	3.50	\$ 1,540.00	50.00%	\$ 770.00	50.00%	\$ 770.00
9	Shape / Compact Base Rock - Top Lift	SY	220.00	3.50	\$ 770.00	50.00%	\$ 385.00	50.00%	\$ 385.00
10	Tack Coat	SY	220.00	1.00	\$ 220.00	50.00%	\$ 110.00	50.00%	\$ 110.00
11	HMAC (Material Only)	TN	25.41	80.00	\$ 2,032.80	50.00%	\$ 1,016.40	50.00%	\$ 1,016.40
12	Installation of HMAC Surface Course	SY	220.00	4.00	\$ 880.00	50.00%	\$ 440.00	50.00%	\$ 440.00
13	Erosion Protection (\$/100 LF)	LS	3.30	1000.00	\$ 3,300.00	50.00%	\$ 1,650.00	50.00%	\$ 1,650.00
14	Construction Staking (\$/100LF)	LS	3.3	500.00	\$ 1,650.00	50.00%	\$ 825.00	50.00%	\$ 825.00
15	Traffic Control / Job Site Safety (\$/100LF)	LS	3.3	250.00	\$ 825.00	50.00%	\$ 412.50	50.00%	\$ 412.50
16	Contingency (nearest \$100)	%	1	15%	\$ 5,300.00	50.00%	\$ 2,650.00	50.00%	\$ 2,650.00
17	Construction Administration (% of Construction Total)	%	1	5%	\$ 2,000.00	50.00%	\$ 1,000.00	50.00%	\$ 1,000.00
	Subtotal				\$ 42,819.22	50.00%	\$ 21,409.61	50.00%	\$ 21,409.61
	Total (Base Bid)				\$ 451,722.39	50.00%	\$ 225,861.20	50.00%	\$ 225,861.20

Site Work Cost

Site Work Cost Breakdown

This form must be submitted with the Development Cost Schedule as justification of Site Work costs.

Column A: The Site Work activity reflected here must match the Site Work activity reflected in the Development Cost Schedule.

Columns B and C: In determining actual construction cost, two different methods may be used:

The construction costs may be broken into labor (Column B) and materials (Column C) for the activity; **OR**

The use of unit price (Column B) and the number of units (Column C) data for the activity.

Column D: To arrive at total construction costs in Column D:

If based on labor and materials, add Column B and Column C together to arrive at total construction costs.

If based on unit price measures, Column B is multiplied by Column C to arrive at total construction costs.

Column E: Any proposed activity involving the acquisition of real property, easements, rights-of-way, etc., must have the projected costs of this acquisition for the activity.

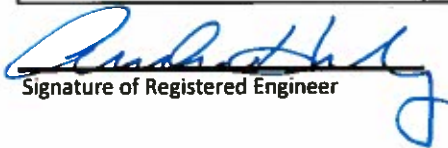
Column F: Engineering/architectural costs must be broken out by the Site Work activity.

Column G: Figures for Column G, Total Activity Cost, are obtained by adding together Columns D, E, and F to get the total costs.

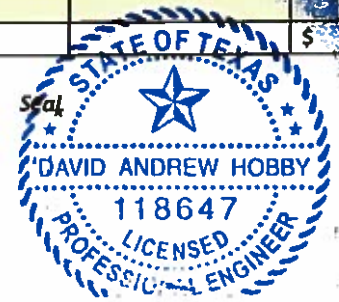
****This form must be completed by a Third-Party engineer licensed to practice in the State of Texas. His or her signature and registration seal must be on the form.****

For Site Work costs that exceed \$15,000 per Unit and are included in Eligible Basis, a CPA letter allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible must be submitted behind this tab.

A.	B.	C.	D.	E.	F.	G.
Activity	Labor or Unit Price	Materials or # of Units	Total Construction Costs	Acquisition Costs	Engineering / Architectural Costs	Total Activity Costs
Curbs	\$21.00/SQ.FT.	5,440	\$114,240.00	-	-	\$114,240.00
Sidewalks	\$6.75/SQ.FT.	13,500	\$91,125.00	-	-	\$91,125.00
Asphalt Pavement	\$4.00/SQ.FT.	92,876	\$371,504.00	-	-	\$371,504.00
Driveways	\$9.00/SQ.FT.	1,160	\$10,440.00	-	-	\$10,440.00
Earthwork	\$14.00/SQ.FT.	29,800	\$417,200.00	-	-	\$417,200.00
Fencing	\$50.00/SQ.FT.	1,935	\$96,750.00	-	-	\$96,750.00
Electric Service	\$55,000/EA	1	\$55,000.00	-	-	\$55,000.00
Gas Service	\$15,000/EA	1	\$15,000.00	-	-	\$15,000.00
8" Backflow Preventer	\$12,000/EA	2	\$24,000.00	-	-	\$24,000.00
8" Water Line Fittings	\$20,000/EA	1	\$20,000.00	-	-	\$20,000.00
Fire Hydrant	\$8,000/EA	5	\$40,000.00	-	-	\$40,000.00
8" C-900 Fire Line	\$45.00/L.FT.	704	\$31,680.00	-	-	\$31,680.00
2" Water Meter	\$3,000/EA	4	\$12,000.00	-	-	\$12,000.00
8" Sewer Tap	\$400.00/EA	1	\$400.00	-	-	\$400.00
Sewer Manhole	\$7,300/EA	4	\$29,200.00	-	-	\$29,200.00
8" Sewer Line	\$50.00/L.FT.	591	\$29,550.00	-	-	\$29,550.00
Total						\$ 1,358,089.00


Signature of Registered Engineer

04-11-16 Andrew Hobby
Printed Name
04-11-16
Date



Development Cost Schedule

BUILDING COSTS (Continued):			
Finishes	2,551,493		2,551,493
Specialties			
Equipment	273,499		273,499
Furnishings			
Special Construction			
Conveying Systems (Elevators)	185,197		185,197
Mechanical (HVAC; Plumbing)	1,160,647		1,160,647
Electrical	1,000,978		1,000,978
Individually itemize costs below:			
Detached Community Facilities/Building			
Carports and/or Garages	49,099		
Lead-Based Paint Abatement			
Asbestos Abatement (Rehabilitation Only)			
Structured Parking			
Commercial Space Costs			
Other (specify) - see footnote 1			
Subtotal Building Costs	\$8,183,982	\$0	\$8,134,883
TOTAL BUILDING COSTS & SITE WORK			
(including site amenities)			
Contingency	5.00%	\$522,602	\$493,399
TOTAL HARD COSTS		\$10,974,645	\$0
			\$10,361,371
OTHER CONSTRUCTION COSTS			
General requirements (<6%)	6.00%	627,123	592,078
Field supervision (within GR limit)			
Contractor overhead (<2%)	2.00%	209,041	197,359
G & A Field (within overhead limit)			
Contractor profit (<6%)	6.00%	627,123	592,078
TOTAL CONTRACTOR FEES		\$1,463,286	\$0
			\$1,381,516
TOTAL CONSTRUCTION CONTRACT			
		\$12,437,931	\$0
			\$11,742,887
SOFT COSTS³			
Architectural - Design fees		239,718	239,718
Architectural - Supervision fees		100,000	100,000
Engineering fees		157,690	157,690
Real estate attorney/other legal fees		100,000	80,000
Accounting fees		35,000	35,000
Impact Fees		150,000	150,000
Building permits & related costs			
Appraisal		10,000	10,000
Market analysis		6,500	6,500
Environmental assessment		5,168	5,168
Soils report		10,660	10,660
Survey		25,000	25,000
Marketing			
Hazard & liability insurance		40,000	40,000
Real property taxes		70,000	70,000
Personal property taxes			
Tenant relocation expenses			
FF&E		325,000	325,000
Other (specify) - see footnote 1			
Subtotal Soft Cost		\$1,274,736	\$0
			\$1,254,736

FINANCING:			
CONSTRUCTION LOAN(S)³			
Interest	700,000		399,230
Loan origination fees	102,000		102,000
Title & recording fees	99,000		99,000
Closing costs & legal fees	49,250		49,250
Inspection fees	50,000		50,000
Credit Report			
Discount Points			
Lender 3rd Party Reports	20,000		20,000
PERMANENT LOAN(S)			
Loan origination fees			
Title & recording fees			
Closing costs & legal			
Bond premium			
Credit report			
Discount points			
Credit enhancement fees			
Prepaid MIP	51,000		
FHA Application Fee	30,000		
GNMA Fee	3,000		
BRIDGE LOAN(S)			
Interest	205,000		205,000
Loan origination fees	54,000		54,000
Title & recording fees			
Closing costs & legal fees			
Other (specify) - see footnote 1			
Other (specify) - see footnote 1			
OTHER FINANCING COSTS³			
Tax credit fees	52,357		
Tax and/or bond counsel			
Payment bonds			
Performance bonds			
Credit enhancement fees			
Mortgage insurance premiums			
Cost of underwriting & issuance			
Syndication organizational cost	1,000		
Tax opinion			
Contractor Guarantee Fee			
Developer Guarantee Fee			
Other (specify) - see footnote 1			
Other (specify) - see footnote 1			
Subtotal Financing Cost	\$1,416,607	\$0	\$978,480
DEVELOPER FEES³			
Housing consultant fees ⁴			
General & administrative			
Profit or fee	2,188,407		2,096,415
Subtotal Developer Fees 15.00%	\$2,188,407	\$0	\$2,096,415 15.00%
RESERVES			
Rent-up	200,000		
Operating	650,000		
Replacement			
Escrows			
Subtotal Reserves	\$850,000	\$0	\$0
TOTAL HOUSING DEVELOPMENT COSTS⁵	\$19,398,302	\$0	\$16,072,518

Sources & Uses

NOTE: We have highlighted the costs that have changed from prior Amendment submission in order to assist TDHCA in their underwriting.

Financing Narrative and Summary of Sources and Uses

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

Financing Participants	Funding Description	Construction Period		Lien Position	Permanent Period					Lien Position
		Loan/Equity Amount	Interest Rate (%)		Loan/Equity Amount	Interest Rate (%)	Amort - ization	Term (Yrs)	Syndication Rate	
Debt										
TDHCA	HOME	\$2,000,000	3%	2	\$ 2,000,000	3%	40	40		2
TDHCA	TCAP Loan Repayments	\$0	0%		\$ -	0%	0	0		
TDHCA	Mortgage Revenue Bond	\$0	0%		\$ -	0%	0	0		
Citi	Conventional/FHA	\$8,300,000	4.25%	1						
Citi	Conventional/FHA				8,300,000	4.25%	40	40		1
City of Midland (See Offsite Costs)	Local Government Loan				\$ 225,861					
***See city resolution										
Citi Bridge Loan	Conventional Loan	\$2,971,365	2.70%	3						
Third Party Equity										
RBC	HTC	\$ 786,147			\$ 1,634,842				1.04	
Grant										
Deferred Developer Fee										
DDC Investments, Ltd		\$ 1,561,922			\$ 698,229					
Other										
	Total Sources of Funds	\$ 16,468,129			\$ 19,398,302					
	Total Uses of Funds				\$ 19,398,302					

Briefly describe the complete financing plan for the Development, including a discussion of the sources of funds. The information must be consistent with all other documentation in this section. Provide sufficient detail so that the reader can understand all terms related to each source that are not readily apparent above or in the term sheets.

[Please see description attached under this tab](#)

Merritt Leisure Financing Narrative

Merritt Leisure will utilize an FHA 221d4 construction/permanent loan from Citibank ("Citi") and TDHCA HOME funds. Finally, Equity contributions from RBC Capital Markets ("RBC") will be added to these sources to finance the construction and long term operations of Merritt Leisure. EQUITY INSTALLMENTS from RBC will total \$8,174,212 or \$1.04 per tax credit dollar. Proceeds from the tax credit syndication will provide funding throughout the construction and Placed in Service period according to a pay-in schedule described in the Syndication Agreement letter. Due to the timing of equity installments, the development will utilize a BRIDGE LOAN from Citi with a limit of \$3,100,000. The final interest rate will be determined at closing based on LIBOR plus 250 bps. Today current assumed UW rate is 2.7% and a term of 36 months. The HOME LOAN from TDHCA in the amount of \$2,000,000 bears an interest rate of 3% and a 40 year term with a 40 amortization. The FHA 221d4 CONSTRUCTION/PERMANENT LOAN from Citi will be in the amount of \$8,300,000. The final permanent interest rate will be determined at the time of rate lock which will occur prior to the Initial Loan closing. Today the current assumed UW rate is 4.25% with a 40 year amortization and 40 year term. The Developer Profit will be 15% of eligible cost, less any deferred developer fees and will be paid by the closing of the permanent mortgage loan and the final equity installment. Any deferred developer fees will be repaid from net cash flow of the development, after payment of all operating expenses including reserves, debt payments, asset mgmt. fees and any other items required by the Syndication agreement.

**Merritt Leisure
Midland, Midland County, Texas**

Benefits of "Below Market" Interest Rates

		<u>Interest Rate</u>	<u>Amortization</u>	<u>Term</u>	<u>Payment</u>	<u>Annual Savings</u>
HOME	\$ 2,000,000	3.00%	30	30	\$ 101,185	\$ (2,884)
Midland	\$ 2,000,000	3.00%	30	15	\$ 101,185	\$ (2,884)
HUD 221d4	\$ 2,000,000	4.25%	40	40	\$ 104,069	

20 Year US Treasury		2.18%	
Year	Savings	NPV	
1	\$ 2,884	\$ 2,884	
2	\$ 2,884	\$ 2,762	
3	\$ 2,884	\$ 2,703	
4	\$ 2,884	\$ 2,646	
5	\$ 2,884	\$ 2,589	
6	\$ 2,884	\$ 2,534	
7	\$ 2,884	\$ 2,480	
8	\$ 2,884	\$ 2,427	
9	\$ 2,884	\$ 2,375	
10	\$ 2,884	\$ 2,324	
11	\$ 2,884	\$ 2,275	
12	\$ 2,884	\$ 2,226	
13	\$ 2,884	\$ 2,179	
14	\$ 2,884	\$ 2,132	
15	\$ 2,884	\$ 2,087	
NPV of savings of Below Market Loan		<u>\$ 36,623</u>	

Merritt Leisure
(Development Owner: DDC Merritt Leisure, Ltd)

TDHCA #: 15234

Amendment 2 Deficiency Response

Primary Contact: Colby Denison
1904 W. 35th Street
Austin, TX 78703
512 732 1226
Email: Colby@denisondevelopment.com

Secondary Contact: Stacy Swisher
432 770 7262
Email: Stacyswisher4@gmail.com

DDC Merritt Leisure, Ltd.

1. According to your cover letter less land is being used for this development and acquisition costs reflected in your revised total development cost schedule have decreased. Therefore, please provide:
 - a. a revised site plan identifying the correct acreage of the development; and
 - b. a revised real estate contract
 - Revised Site plan is attached under this tab
 - Revised Real Estate Contract is attached under this tab

Revised Site Plan

Progress Print
 Not for regulatory approval, permitting, or construction.
 Registrant's Name: Andrea Freiburger
 Registrant's Number: 19520

DRAWN BY: AF
 CHECKED BY: SAI
 PROJECT #: 131-0115

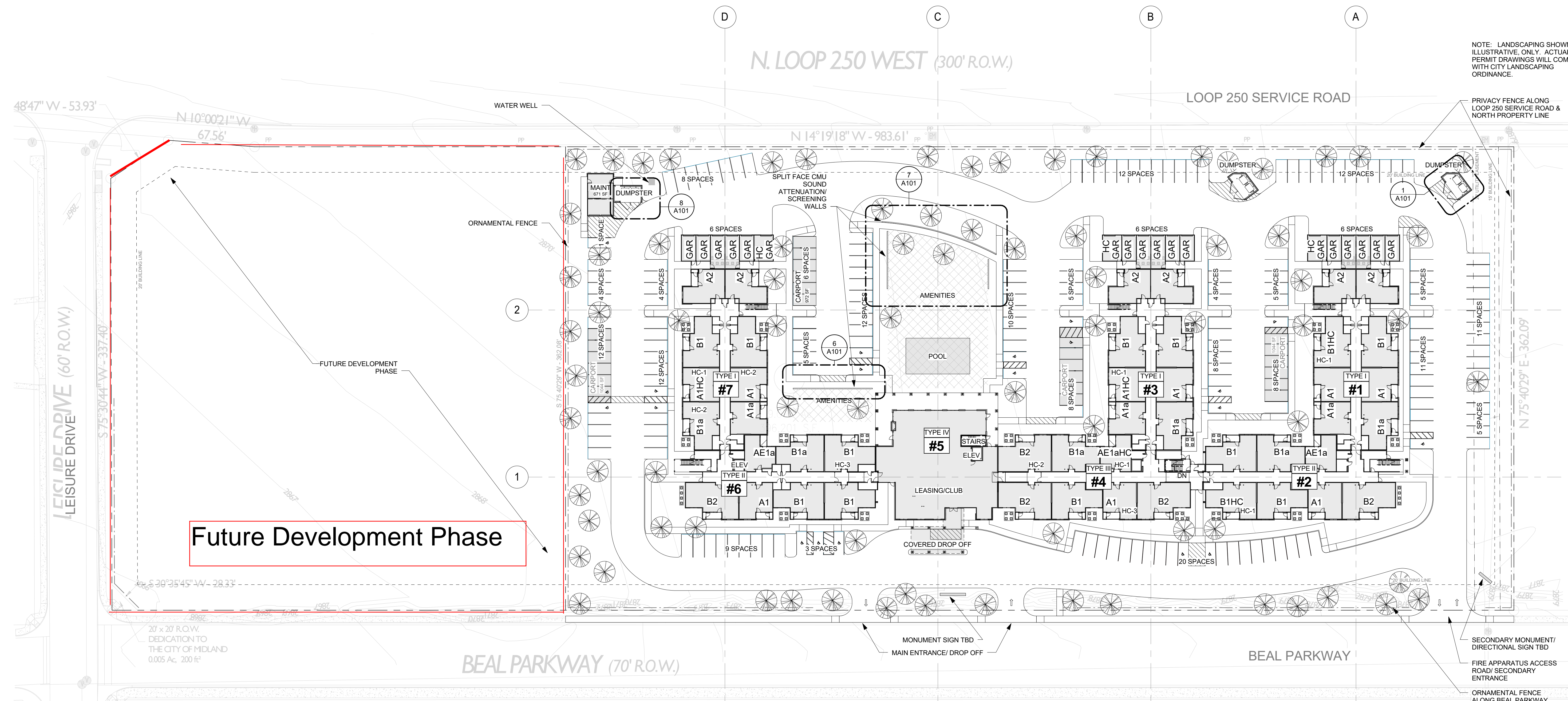
DDC MERRITT LEISURE, LTD.
 1904 W. 35TH STREET
 AUSTIN, TX 78703

MERRITT LEISURE
 BEAL PARKWAY
 MIDLAND, TX 79703

REVISIONS
 T.B.D.
 ISSUED FOR PERMIT
 03/23/16
 ISSUED FOR BID
 03/23/16
 ISSUED FOR CONSTRUCTION
 T.B.D.
 DWG NAME

DATE
 04/25/16
 DESCRIPTION
ARCHITECTURAL SITE PLAN
 SHEET

A100



NOTE: LANDSCAPING SHOWN IS ILLUSTRATIVE ONLY. ACTUAL PERMIT DRAWINGS WILL COMPLY WITH CITY LANDSCAPING ORDINANCE.

PRIVACY FENCE ALONG LOOP 250 SERVICE ROAD & NORTH PROPERTY LINE

Future Development Phase

20' x 20' R.O.W. DEDICATION TO THE CITY OF MIDLAND
 0.005 Ac, 200 ft²

PARKING REQUIRED PER CITY OF MIDLAND				
UNIT LABEL	# OF BEDROOMS	SPACES REQUIRED	TOTAL # OF UNITS	TOTAL SPACES REQUIRED
AE1a	0	1.25	9	11
AE1	0	1.25	3	4
AE1b	0	1.25	1	1
A1a	1	1.25	9	11
A1	1	1.25	29	36
A2	1	1.25	18	23
B1a	1	1.25	18	23
B1	2	1.25	39	49
B2	2	1.25	13	16
B2_HC	2	1.25	1	1
TOTALS			140	175

MERRITT LEISURE								
UNIT TYPE	# OF BEDROOMS	# OF BATHS	SQ. FT. PER UNIT	BUILDING TYPE				TOTAL # OF RESIDENTIAL BUILDINGS
				I	II	III	IV	
AE1a	0	1	556			3	3	7
AE1	0	1	556			3	3	7
AE1b	0	1	556			1	1	2
A1a	1	1	664			3	3	9
A1	1	1	691			6	6	29
A2	1	1	686			4	4	18
B1a	2	1	850			3	3	18
B1	2	1	880			6	6	39
B2	2	2	1,000			2	2	13
B2_HC	2	2	989			1	1	989
TOTALS (ALL INSTANCES)						72	40	140

NET RENTABLE SQUARE FEET FROM RENT SCHEDULE: 109,200

SITE DENSITY CALCULATION:
 TOTAL PROJECT AREA: 6.16 ACRES
 UNITS: 140 UNITS
 DENSITY: 22.7 UNITS/ACRE

Revised Real Estate Contract

Amendment to Commercial Contract – Unimproved Property

Date: March 31, 2016

Recitals

Parties:

Seller: J. Durwood Owen and Kathleen McKenzie Owen Revocable Living Trust

Buyer: Denison Development & Construction, Inc. or Assigns

Contract Date: January 8, 2015

Closing Date: Buyer has paid and Seller has received the extension payment per the Amended Exhibit B of the Contract extending the Closing Date to March 31, 2016. In the event of a contradiction of terms between this Amendment and prior Amendments or the Original Contract, the terms of this Amendment shall prevail.

Maintenance of Property: Buyer will reimburse Seller for all City/county required clean-up/ground maintenance through Closing on the Property.

Amendments to Contract (Including Prior Executed Amendments)

Closing Date

The Parties hereby agree to extend the Closing Date to **August 31st, 2016** (Fourth Extension). Buyer shall deposit additional Earnest Money in the amount of Twenty-Thousand Dollars (\$20,000.00) to the Title Company upon execution of this amendment by both Parties, and such funds shall be non-refundable, and non-applicable to the Sales Price. Such Fourth Extension shall be released to the Seller by the Title Company.

Permitted Extensions to Closing Date

Buyer shall also be granted two (2) further thirty (30) day extensions of the Closing date by depositing an additional Fifty-Thousand Dollars (\$50,000.00) of additional Earnest Money to the Title Company for each extension. Such additional Earnest Money deposits shall be non-refundable, and non-applicable to the Sales Price.

Property (Exhibit A to the Contract)

2. PROPERTY:

A: "Property" means that real property situated in Midland County, Texas at West Loop 250 and Leisure Ave., Midland, TX (address) and that is legally described on the attached Exhibit A or as follows: Lots 1 and 2, Block 162, and South 378 feet of Lot 1, Block 163, Wilshire Park Addition, Sec. 9, and all of the former EXECUTIVE DR., Midland, Texas

Buyer shall have hereby have the option (but not the requirement) to reduce the land size by a minimum of 2.5 Acres. A revised Exhibit A has been hereto attached and shows the contemplated reduction in land size. Buyer and Seller acknowledge that a reduction in land size requires Texas Dept of Housing and Community Affairs (TDHCA) approval by both staff and the board of directors, and such approval is anticipated on the last Thursday of May.

Amendment to Commercial Contract – Unimproved Property

TDHCA requires a minimum of 45 days to post such amendments per their public notification requirements in their rules.

Should Buyer opt to reduce the land size and leave Seller with the balance of the original Property, Buyer and/or Assigns agrees not to oppose and will support any and all rezoning or re-platting of the remainder of the land.

Signed

Seller:

The J. Durwood Owen and Kathleen McKenzie Owen Revocable Living Trust

By:  _____

By: _____

TRUSTEE

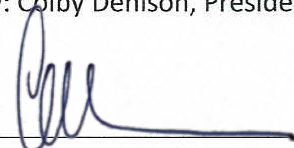
20 April 2016

By: _____

Buyer:

Denison Development & Construction, Inc. or Assigns

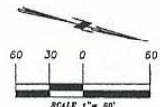
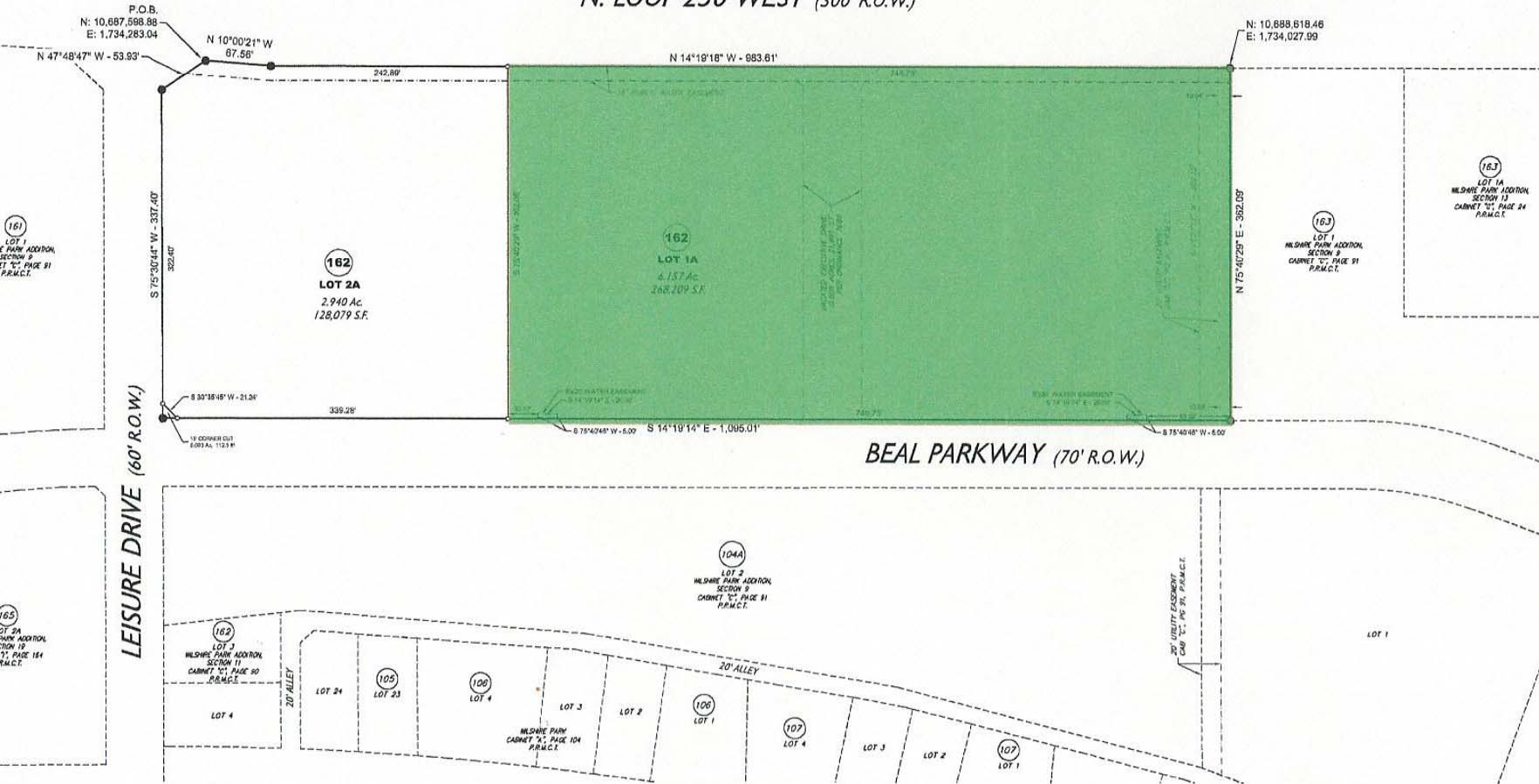
By: Colby Denison, President

 _____

WILSHIRE PARK, SECTION 20

N. LOOP 250 WEST (300' R.O.W.)

BEING A REPLAT OF LOTS 1 & 2, BLOCK 162; 3.138-ACRES OF THE SOUTH HALF OF LOT 1, BLOCK 162 AND THE PREVIOUSLY VACATED 0.505 ACRES OF EXECUTIVE DRIVE ALL OUT OF WILSHIRE PARK ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND TEXAS.



GRID
BEARINGS, DISTANCES, COORDINATES AND ACREAGE SHOWN HEREON ARE GRID, NAD83(CORS96), TEXAS CENTRAL ZONE (4203), US FEET.

LEGEND

- DENOTES FOUND 1/2" IRON ROD
- DENOTES SET 1/2" IRON ROD
- CAS MARKED "SFW FRM 101173 UNLESS NOTED OTHERWISE
- DENOTES PROPERTY BOUNDARY LINE
- DENOTES LOT LINE
- - - DENOTES EASEMENT LINE
- - - DENOTES ADJACENT LOT LINE

CERTIFICATE OF APPROVAL
This is to certify that the above and foregoing plat of PARK, SECTION 20, was approved by proper action of Planning and Zoning Commission of the City of Midland on this _____ day of _____, 2016.

JANE WOLF, CHAIRMAN

JESSICA CARPENTER, SECRETARY

A PORTION OF THIS ADDITION...
...AND BOUNDS MAY BE A...
...OF CITY ORDINANCE AND STATE...
...AND SUBJECT TO FINES AND...
...OF UTILITIES AND BUILDING...
...OF A SITE PLAN BY THE CITY...
...AND MAY BE REQUIRED BEFORE...
...OF GRID AND CONFORM TO THE...
...COORDINATE SYSTEM, "TEXAS...
...ZONE", UTILIZING UTILIZING CITY...
...LAND SURVEY MARKER "USC&D...
...COMBINED SCALE FACTOR =...
...955.
...BY: KATHLEEN OWEN
...TRUST
...RINGS RD
...Y 78663

OWNER'S CERTIFICATE
THE STATE OF TEXAS
COUNTY OF _____

WHEREAS, J DURWOOD & KATHLEEN OWEN REVOCABLE LIVING TRUST, is the record owner of a tract of land situated in the SW/4 of Section 31, Block 38, T-1-S, T&R RR Co Survey, County of Midland,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, J DURWOOD & KATHLEEN OWEN REVOCABLE LIVING TRUST, being the owner of the land shown on this plat designated as WILSHIRE PARK ADDITION, SECTION 20, an Addition to the City of Midland, Midland County, Texas and whose name is subscribed hereto, do hereby dedicate to the public use forever the streets, and easements shown thereon.

WITNESS my hand at Midland, Texas, this _____ day of _____, 2016.

By: _____

ACKNOWLEDGEMENT
THE STATE OF TEXAS
COUNTY OF _____

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he was acting as owner, and that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated. Given under my hand and seal of office this _____ day of _____, 2016.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

UTILITY COMPANY'S CERTIFICATE
This plat has been checked for accessibility of utilities.

AT&S ENERGY
BY: _____

AT&T
BY: _____

SUDDENLINK COMMUNICATION
BY: _____

SHARYLAND UTILITIES
BY: _____

GRANDE COMMUNICATION
BY: _____

QNCOR ELECTRIC DELIVERY
BY: _____

SURVEYOR'S CERTIFICATE
KNOW ALL MEN BY THESE PRESENTS:

That I, Phillip J. Sublett, a Registered Professional Land Surveyor of the State of Texas, do hereby certify that this plat was prepared from an actual and accurate survey of the land and that all other monuments shown hereon were properly located under my supervision, in accordance with the Subdivision of Land Act, Chapter 201, Texas Civil Statutes, as amended, and the rules and regulations of the State Board of Professional Land Surveyors, Midland, Texas.

PRELIMINARY. THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE OR SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT.

Phillip J. Sublett
Registered Professional Land Surveyor
No. 6438
State of Texas

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. _____ CABINET _____
DATE _____ PAGE _____

John F. Watson & Company
LAND & DEVELOPMENT SERVICES
PROFESSIONAL LAND SURVEYORS
200 N. Leakey, Suite 200 Midland, Texas 79701
TX 15 FRM 181 (7-14-08)
JOB NO. XX-XXXX FIELD BOOK DRAFT REV. _____

WILSHIRE PARK
SECTION 20

20 APR 2016

DDC Merritt Leisure, Ltd.

2. Total Development Cost Schedule- your revised schedule reflects total site work costs of \$1,311,339; however, you provided a site work cost breakdown totaling \$1,358,089. Please reconcile this difference and revise the exhibit(s) as appropriate.
 - In the Development Cost Schedule - Site Work Cost Subtotal is 1,311,339 + the fencing is \$96,750 = \$1,408,089 which is the new certified site work cost breakdown. Please see new Certified Site Cost breakdown under this tab.

Site Cost Breakdown

Site Work Cost Breakdown

This form must be submitted with the Development Cost Schedule as justification of Site Work costs.

Column A: The Site Work activity reflected here must match the Site Work activity reflected in the Development Cost Schedule.

Columns B and C: In determining actual construction cost, two different methods may be used:

The construction costs may be broken into labor (Column B) and materials (Column C) for the activity; **OR**

The use of unit price (Column B) and the number of units (Column C) data for the activity.

Column D: To arrive at total construction costs in Column D:

If based on labor and materials, add Column B and Column C together to arrive at total construction costs.

If based on unit price measures, Column B is multiplied by Column C to arrive at total construction costs.

Column E: Any proposed activity involving the acquisition of real property, easements, rights-of-way, etc., must have the projected costs of this acquisition for the activity.

Column F: Engineering/architectural costs must be broken out by the Site Work activity.

Column G: Figures for Column G, Total Activity Cost, are obtained by adding together Columns D, E, and F to get the total costs.

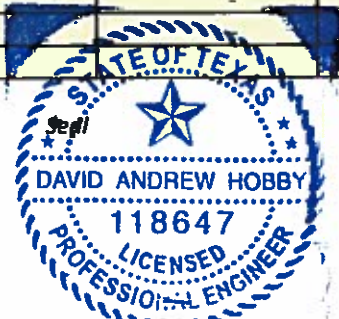
****This form must be completed by a Third-Party engineer licensed to practice in the State of Texas. His or her signature and registration seal must be on the form.****

For Site Work costs that exceed \$15,000 per Unit and are included in Eligible Basis, a CPA letter allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible must be submitted behind this tab.

A.	B.	C.	D.	E.	F.	G.
Activity	Labor or Unit Price	Materials or # of Units	Total Construction Costs	Acquisition Costs	Engineering / Architectural Costs	Total Activity Costs
Curbs	\$21.00/SQ.FT.	5,440	\$114,240.00	-	-	\$114,240.00
Sidewalks	\$6.75/SQ.FT.	13,500	\$91,125.00	-	-	\$91,125.00
Asphalt Pavement	\$4.00/SQ.FT.	92,876	\$371,504.00	-	-	\$371,504.00
Driveways	\$9.00/SQ.FT.	1,160	\$10,440.00	-	-	\$10,440.00
Earthwork	\$14.00/SQ.FT.	29,800	\$417,200.00	-	-	\$417,200.00
Fencing	\$50.00/SQ.FT.	1,935	\$96,750.00	-	-	\$96,750.00
Electric Service	\$55,000/EA	1	\$55,000.00	-	-	\$55,000.00
Gas Service	\$15,000/EA	1	\$15,000.00	-	-	\$15,000.00
8" Backflow Preventer	\$12,000/EA	2	\$24,000.00	-	-	\$24,000.00
8" Water Line Fittings	\$20,000/EA	1	\$20,000.00	-	-	\$20,000.00
Fire Hydrant	\$8,000/EA	5	\$40,000.00	-	-	\$40,000.00
8" C-900 Fire Line	\$45.00/L.FT.	704	\$31,680.00	-	-	\$31,680.00
2" Water Meter	\$3,000/EA	4	\$12,000.00	-	-	\$12,000.00
8" Sewer Tap	\$400.00/EA	1	\$400.00	-	-	\$400.00
Sewer Manhole	\$7,300/EA	4	\$29,200.00	-	-	\$29,200.00
8" Sewer Line	\$50.00/L.FT.	591	\$29,550.00	-	-	\$29,550.00
Water Well & Storage	\$50,000/EA	1	\$50,000.00	-	-	\$50,000.00
Total						1,408,089.00


Signature of Registered Engineer

Andrew Hobby
Printed Name
04-25-16
Date



DDC Merritt Leisure, Ltd.

3. Please provide current loan and equity commitments consistent with the amounts and terms reflected and described in your revised sources and uses exhibit and financing narrative. Additionally, we request to have a conference call with Mahesh regarding the FHA loan and talk through his timing with the concept meeting, etc. Please propose dates and times once you coordinate with Mahesh on your end for this call.



RBC Letter



April 22, 2016

DDC Merritt Leisure, Ltd.
c/o Colby W Denison
1904 W 35th Street
Austin, Texas 78703

**Re: Merritt Leisure
Midland, Texas**

Dear Colby:

Thank you for providing us the opportunity to submit a proposal on Merritt Leisure (the “Project”). This letter serves as an indication of RBC’s interest in acquiring an ownership interests in DDC Merritt Leisure, Ltd., a Texas to-be-formed Limited Partnership, or similar entity to be formed (the “Partnership”). RBC Tax Credit Equity, LLC, its successors and assigns (“RBC”) will acquire a 99.98% interest, and RBC Tax Credit Manager II, Inc. (“RBC Manager”) will acquire a .01% interest (collectively, the “Interest”) in the Partnership.

1. **Project and Parties Involved.**

- (a) The Project, located in the City of Midland, State of Texas will consist of 140 apartment units. Within the Project 115 units will be occupied in compliance with the low-income housing tax credit (“LIHTC”) requirements of Section 42 of the Internal Revenue Code. The remaining 25 units will be market-rate units.
- (b) The parties involved with the Project are as follows:
 - (i) **General Partner.** The General Partner is DDC Merritt Leisure GP, LLC, a to-be-formed single purpose, taxable entity.
 - (ii) **Developer.** The Developers are DDC Investments, Ltd., a Texas Limited Partnership, and Crossroads Housing Development Corporation, a Texas non-profit corporation (CHDO).
 - (iii) **Guarantors.** Subject to RBC’s review and approval of financial statements, the Guarantors are the General Partner, the Developer and other entities deemed necessary by RBC, on a joint and several basis.

2. **Purchase Price.** The Interest in the Partnership will be acquired for a total capital contribution of \$8,174,212. This capital contribution is based on the Project receiving the tax credits described in Paragraph 3 and represents a price per tax credit dollar of \$1.04. The capital contribution, subject to adjustments set forth in Paragraph 5 below, will be payable to the Partnership in installments as set forth on **Exhibit A**.

3. **LIHTC.** The Project anticipates receiving a reservation of 2016 LIHTC in the amount of \$786,147 annually. The total LIHTC anticipated to be delivered to the Partnership is \$7,861,470. The LIHTC will be available to the Partnership beginning in 2017.

4. **Funding Sources.** The purchase price is based upon the assumption that the Project will receive funding on the terms and conditions listed on **Exhibit B**.

5. **Adjustments.**

- (a) **Downward Capital Adjustment.** The amount of LIHTC to be allocated to RBC during the credit period (“Certified LIHTC”) will be determined promptly following receipt of cost certification from the accountant and Form 8609. If the Certified LIHTC is less than Projected LIHTC, RBC’s capital contributions will be reduced by an amount (the “Downward Capital Adjustment”) equal to the product of (i) \$1.04 multiplied by (ii) the difference between Projected LIHTC and Certified LIHTC.
- (b) **Late Delivery Adjustment.** The amount of LIHTC allocated to RBC for 2017 will be determined at the time the Project is fully leased. If the amount of the LIHTC allocated to RBC for calendar year 2017 is less than the amounts shown in Paragraph 3, RBC’s capital contribution shall be reduced by an amount (the “Late Delivery Adjustment”) equal to the difference between the amount shown in Paragraph 3 (adjusted for any Downward Capital Adjustment) and the amount of the LIHTC allocated to RBC for calendar year 2017 less the present value (using a 12% discount rate) of the additional LIHTC projected to be received in 2027.
- (c) **Payment by General Partner.** If the Downward Capital Adjustment and the Late Delivery Adjustment exceed the total of all unfunded capital contributions, then the General Partner will make a payment to the Partnership equal to the amount of such excess, and the Partnership will immediately distribute such amount to RBC as a return of its capital contribution. Except to the extent otherwise stated herein, this payment will not give rise to any right as a loan or capital contribution or result in any increase in the General Partner’s capital account.

6. **General Partner and Guarantor Obligations.** In addition to Paragraph 5(c) above, the General Partner is responsible for items 6(a) through 6(f) below. Any amounts advanced by the General Partner will not be considered as loans or capital contributions reimbursable or repayable by the Partnership unless otherwise stated herein.

- (a) **Construction Completion.** The General Partner will guarantee construction completion in accordance with approved plans and specifications and will pay for any construction costs, costs to achieve permanent loan closing, repayment of all construction financing and costs necessary to fund reserves required to be funded at or before permanent loan closing.
- (b) **Operating Deficits.**
 - (i) **Pre-Stabilization.** The General Partner will guarantee funding of operating deficits until the date (the “Stabilization Date”) which is the first day of the month following a 3-month period (such 3-month period to commence after the permanent loan closing) in which the Project has maintained an average 1.15 debt service coverage; and
 - (ii) **Post-Stabilization.** Commencing with the Stabilization Date and continuing until the Release Date (defined below), the General Partner will guarantee funding of operating deficits in an amount equal to 6 months of operating expenses, debt service, and replacement reserves. Any funds paid by the General Partner under this Paragraph 6(b)(ii) shall be treated as an unsecured loan to the Partnership with interest at the rate of 8% per annum, to be repaid out of cash flow, refinancing, sale and liquidation proceeds as provided in Paragraph 9 hereof.

The “Release Date” is the later of:

- (A) the fifth anniversary of the Stabilization Date,
- (B) the date the Project has achieved an average debt service coverage of 1.15 for the 12-month period immediately prior to the Release Date, and
- (C) the date the Project has achieved a 1.15 debt service coverage for each of the 3 months immediately prior to the Release Date.

- (c) LIHTC Shortfall or Recapture Event. To the extent not already addressed by the Downward Capital Adjustment or the Late Delivery Adjustment, if the actual amount of LIHTC for any year is less than Projected LIHTC, the General Partner will guarantee payment to RBC of an amount equal to the shortfall or recapture amount, plus related costs and expenses incurred by RBC.
- (d) Repurchase. The General Partner will repurchase RBC's interest upon the occurrence of certain events described in the Project Entity Agreement.
- (e) Environmental Indemnity. The General Partner will indemnify RBC against any losses due to environmental condition at the Project.
- (f) Developer Fee. The General Partner will guarantee payment of any developer fee remaining unpaid at the end of the LIHTC compliance period.
- (g) Guarantors. The Guarantors will guarantee all of the General Partner's obligations. Prior to the Stabilization Date, the Guarantors will maintain a net worth and liquidity level as determined by RBC after review of the Guarantors' financial statements.

7. **Reserves**.

- (a) Operating Reserves. An operating reserve in the amount of six months of operating reserves, debt service coverage and replacement reserves will be established and maintained by the General Partner concurrent with RBC's final capital contribution. Withdrawals from the operating reserve will be subject to RBC's consent. Expenditures from operating reserves will be replenished from available cash flow as described in Paragraph 9(b) below.
- (b) Replacement Reserves. The Partnership will maintain a replacement reserve, and make contributions on an annual basis equal to the greater of (i) \$250 per unit and (ii) the amount required by the permanent lender. The amount of the contribution will increase annually by 3%. Annual contributions will commence with substantial completion of the Project.

8. **Fees and Compensation**. The following fees will be paid by the Partnership for services rendered in organizing, developing and managing the Partnership and the Project.

- (a) Developer Fee. The Developer will earn a developer fee of \$2,188,407.

The deferred portion of the developer fee shall accrue interest at 8% per annum commencing as of the date of RBC's final capital contribution. Payment of the deferred fee will be subordinate to all other Partnership debt as well as operating expense and reserve requirements
- (b) Incentive Management Fee. An incentive management fee will be payable to the General Partner on an annual basis in an amount equal to 90% of net cash flow as set forth on Paragraph 9(b) below.
- (c) Property Management Fee. The property management fee will not exceed 5% of gross rental revenues. The management agent and the terms of the property management agreement are subject to the prior approval of RBC. If the management agent is an affiliate of any Guarantor, its fee will be subordinated to payment of operating costs and required debt service and reserve payments.
- (d) Asset Management Fee. The Partnership will pay RBC Manager an annual asset management fee of \$5,000 which will increase by 3% annually.

9. **Tax Benefits and Distributions.**

- (a) **Tax Benefits.** Tax profits, tax losses, and tax credits will be allocated 99.98% to RBC, .01% to RBC Manager and .01% to the General Partner.
- (b) **Net Cash Flow Distributions.** Distributions of net cash flow (cash receipts less cash expenditures, payment of debt service, property management fee and asset management fee), will be made as follows:
 - (i) to RBC in satisfaction of any unpaid amounts due under Paragraphs 5 and 6 above and for any other amounts due and owing to RBC;
 - (ii) to RBC Manager for any unpaid asset management fees;
 - (iii) to the operating reserve to maintain the balance required in Paragraph 7(a);
 - (iv) to the payment of any unpaid developer fee;
 - (v) to the payment of any debts owed to the General Partner or its affiliates;
 - (vi) 90% of the remaining cash flow to the General Partner as an incentive management fee; and
 - (vii) the balance to the General Partner, RBC and RBC Manager in accordance with their percentage interests described in Paragraph 9(a).
- (c) **Distributions upon Sale, Liquidation or Refinance.** Net proceeds resulting from any sale, liquidation or refinance will be distributed as follows:
 - (i) to payment in full of any Partnership debts except those due to RBC, RBC Manager or the General Partner and/or their affiliates;
 - (ii) to the setting up of any required reserves for contingent liabilities or obligations of the Partnership;
 - (iii) to RBC, in satisfaction of any unpaid amounts due under Paragraphs 5 and 6 above and for any other amounts due and owing to RBC;
 - (iv) to RBC Manager for any unpaid asset management fees;
 - (v) to RBC for any excess or additional capital contributions made by it;
 - (vi) to the payment of any debts owed to the General Partner or its affiliates including any unpaid developer fee;
 - (vii) to RBC Manager, 1% of such proceeds as a capital transaction administrative fee;
 - (viii) to RBC in an amount equal to any projected federal income tax incurred as a result of the transaction giving rise to such proceeds; and
 - (ix) the balance, 80% to the General Partner, 19% to RBC and 1% to RBC Manager.

10. **Construction.** The General Partner will arrange for a fixed or guaranteed maximum price construction contract. The Contractor's obligations will be secured by a letter of credit in an amount not less than 15% of the amount of the construction contract or a payment and performance bonds in an amount not less than the amount of

the construction contract. The Project will establish a construction contingency in an amount not less than 5% of the construction costs, or such greater amount as RBC may reasonably require following its review of construction documents. RBC, may, in its sole discretion, engage a construction consultant (i) to review plans and specifications and (ii) evaluate the construction progress by providing monthly reports to the Partnership.

11. **Due Diligence, Opinions and Projections.**

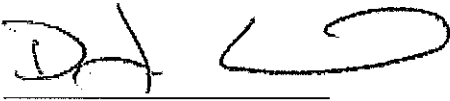
- (a) **Due Diligence.** The General Partner will provide RBC with all due diligence items set forth on its due diligence checklist, including but not limited to, financial statements for the Guarantors, schedule of real estate owned and contingent liabilities, plans and specifications, a current appraisal, a current (less than 6 months old) market study, a current (less than 6 months old) Phase I environmental report, rent and expense data from comparable properties, site/market visit and title and survey. The General Partner agrees to reasonably cooperate with RBC (including signing such consents as may be necessary) in obtaining background reports on the Developer, Guarantors and other Project entities as determined by RBC.
- (b) **Legal Opinions.** The General Partner's counsel will deliver to RBC a local law opinion satisfactory to RBC. RBC's counsel will prepare a tax opinion and the General Partner agrees to cooperate to provide all necessary documentation requested by RBC's counsel.
- (c) **Diligence Reimbursement.** The Partnership will reimburse RBC \$50,000 toward the costs incurred by RBC in conducting its due diligence review and for the costs and expenses of RBC's counsel in connection with the preparation of the tax opinion. RBC may deduct this amount from its first capital contribution.
- (d) **Projections.** The projections to be attached to the Project Entity Agreement and that support the Tax Opinion will be prepared by RBC based on projections provided by the General Partner. RBC's projections will include development sources and uses, calculation of eligible basis, operating and construction period cash flow analysis, 15-year operating projection, 30-year debt analysis and 15-year capital account analysis.

12. **Closing Contingencies.** RBC's obligation to close on the purchase of the Interest will be contingent upon RBC's receipt, review and approval of all due diligence including the items set forth on its due diligence checklist as well as the following:

- (a) **Project Entity Documents.** Preparation and execution of RBC's standard Project Entity Agreement and other fee agreements containing representations and warranties, covenants, consent rights, and indemnities, each on terms and conditions satisfactory to RBC.
- (b) **Information and Laws.** No adverse change in the information you have provided to us and no adverse change in existing law.
- (c) **Anticipated Closing Date.** The closing occurring on or before July 1, 2016.

If the foregoing is in accordance with your understanding of the terms and conditions, please indicate your acceptance on the enclosed copy and return it to the undersigned.

Very truly yours,


By: 

Name: Dan Kierce

Title: Director

The undersigned approves and accepts the terms of this Letter of Intent.

GENERAL PARTNER:

By: 

Its: Executive Director

Date: 04/29/16

GUARANTORS:

By: 

Its: Managing Member

Date: 4.29.16

By: 

Its:

Date:

**EXHIBIT A
CAPITAL CONTRIBUTIONS**

<u>Conditions</u>	<u>Amount</u>	<u>Anticipated Funding Date</u>
i) 15.00% upon the later of: (a) the execution of the Partnership Agreement, (b) closing of the financing sources described in Exhibit B, and (c) receipt and approval of all due diligence items on RBC's due diligence checklist.	\$1,226,132	July 1, 2016
ii) 35.00% upon the later of: (a) receipt of final Certificates of Occupancy for all of the units, (b) receipt of an architect's certificate of substantial completion, (c) receipt of a preliminary cost certification accompanied by a General Partner certification, and (d) January 1, 2018.	\$2,860,974	January 1, 2018
iii) 47.55% upon the later of: (a) receipt of a final cost certification from an independent certified public accountant, (b) achievement of 100% qualified occupancy, (c) permanent loan conversion, including 90 days of 90% occupancy and 90 days at a 1.20 Debt Service Coverage Ratio, and (d) January 1, 2019.	\$3,887,106	January 1, 2019
iv) 2.45% upon the later of: (a) achievement of the Stabilization Date, (b) receipt of the IRS Form 8609, and (c) April 1, 2019.	\$200,000	April 1, 2019
Total:	\$8,174,212	

EXHIBIT B SOURCES

Construction Loan/Permanent Loan.

- Non-recourse: Yes
- Lender: Citibank - or a Lender acceptable to RBC
- Amount: \$8,300,000
- Maturity: 36 month construction term; 40 year perm term
- Interest Rate: 4.25%
- Amortization: 40 years
- Collateral: 1st mortgage on Project (or other collateral acceptable to RBC)

HOME Loan

- Source: TDHCA
- Amount: \$2,000,000
- Maturity: 40 years
- Interest Rate: 3%
- Amortization: 40 years
- Collateral: 2nd mortgage on Project (or other collateral acceptable to RBC)

Local Government Loan

- Source: City of Midland
- Amount: \$225,861
- Maturity: 15 years
- Interest Rate: 0%
- Amortization: N/A
- Collateral: 3rd mortgage on Project (or other collateral acceptable to RBC)

DDC Merritt Leisure, Ltd.

3. Please provide current loan and equity commitments consistent with the amounts and terms reflected and described in your revised sources and uses exhibit and financing narrative. Additionally, we request to have a conference call with Mahesh regarding the FHA loan and talk through his timing with the concept meeting, etc. Please propose dates and times once you coordinate with Mahesh on your end for this call.



CITI Term Sheet



April 27, 2016

Mr. Colby Denison
Denison Development
1904 W. 35th Street
Austin, Texas 78703

Re: Commitment for a FHA 221(d)(4) construction/permanent period loan in an amount not to exceed \$8,300,000 relating to a multifamily rental project to be known as DDC Merritt Leisure, Ltd., Austin, TX (the "Property")

Dear Mr. Denison:

Citibank, N.A. ("CITI") is pleased to offer to Colby Denison ("Sponsor") this commitment ("Commitment") for financing, subject to the terms, requirements and conditions which follow. All capitalized terms used herein, unless otherwise defined, shall have the meaning set forth on Exhibit A annexed hereto and incorporated herein by this reference (the "Commitment Terms"). CITI's decision to issue this commitment was made in reliance upon the representations and material supplied by Sponsor and Sponsor's representatives, as more particularly described on Exhibit B annexed hereto. CITI understands that Sponsor intends to submit this Commitment to the current property owner ("Seller") with respect to the acquisition of the Property. **This Commitment is subject to, among other things, CITI completing due diligence to confirm the representations made by Sponsor and obtaining final credit committee approval.**

In connection with this Commitment, CITI will be acting solely as a principal and not as your agent, advisor or fiduciary. CITI has not assumed a fiduciary responsibility with respect to this Commitment, and nothing in this Commitment or in any prior relationship between you and CITI will be deemed to create an advisory, fiduciary or agency relationship between us in respect of this Commitment. You should consider carefully whether you would like to engage an independent advisor to represent or otherwise advise you in connection with this Commitment, if you have not already done so.

A. Transaction Summary. The terms of the financing transaction that are the subject of this Commitment are as follows:

1. On the closing date (the "Closing Date"), CITI shall provide a construction/permanent period loan to Borrower (the "Loan") to acquire the Property.
2. The Loan proceeds shall be disbursed in accordance with a loan agreement (the "Loan Agreement") executed and delivered in connection with the Loan. CITI will administer and direct the disbursement of the Loan.
3. On or before the maturity date of the Loan, the Loan shall be repaid in full. In the event that the Loan is not repaid in full on or before the maturity date, at the option of CITI, the Loan will be subject to acceleration, and all obligations of CITI with respect to the transaction contemplated by this Commitment shall terminate.

B. Conditions Precedent to Closing. The obligation of CITI to provide the Loan is subject to satisfaction of the following conditions precedent ("Conditions Precedent to Closing"), in each case in a

manner acceptable to CITI. The form and substance of all documents and items submitted by Borrower hereunder must be acceptable to CITI and its counsel.

1. Credit Approval. This Commitment is subject, among other things, to CITI obtaining final credit committee approval. Sponsor understands and agrees that this Commitment is subject to final approvals as set forth in Part E.4. of this Commitment and is not an agreement to make a loan. Any documentation will be forthcoming only after final approval of the underwriting by CITI's credit committee. The financing will be documented separately and will contain terms and conditions that may be in addition to or in substitution of those set forth in the Commitment.

2. Documents. Borrower shall duly authorize, execute and deliver or cause to be delivered at closing a Multifamily Note, a Multifamily Deed of Trust, or Mortgage, where appropriate (the "Security Instrument"), a Guaranty or Guarantees (including a Completion and Payment Guaranty for the Interim Phase), an Environmental Indemnity Agreement, Assignments and any other financing statement, agreement or document required by CITI in connection with the Loan (collectively, the "Mortgage Documents"). Where appropriate, the Mortgage Documents shall be acknowledged, recorded and filed in the public record, and all recording receipts promptly delivered to CITI.

3. Title Insurance. Borrower shall promptly deliver to CITI a commitment for a mortgagee's title insurance policy, prepared in accordance with CITI's title insurance instructions, along with a pro forma policy in the form included in such instructions. The title insurance commitment and policy must satisfy all of the requirements of such instructions and include such other coverage and endorsements as CITI may require. The company and/or agent issuing the commitment shall be acceptable to CITI in all respects. Borrower shall also furnish CITI with copies of all instruments affecting title to the Property including, but not limited to, all instruments referenced in Schedule B of the pro forma policy.

4. UCC Search/Perfection. Borrower shall commission UCC searches in the real estate records and personal property records of the following jurisdictions and shall furnish written reports of such searches to CITI: (i) the jurisdiction where the Property is located, (ii) any other jurisdiction in which Borrower has its principal office for the conduct of its business, (iii) in the central UCC filing location specified by the law of the state where the Property is located, and (iv) any other office where filing is necessary to perfect the security interest in the Collateral (as hereinafter defined). All such searches shall be updated to the time of recordation of the Mortgage Documents and shall show no security interests affecting the Property, Guarantor or Borrower, other than those naming CITI as the secured party. Borrower shall cause the appropriate filing of financing statements, on forms supplied by CITI, evidencing CITI's perfected first priority security interest in all personal property, machinery, equipment, building materials, contract rights, furniture, fixtures, royalties, receivables and other rights related thereto, as well as all leases, rents, revenues and proceeds therefrom and all proceeds of the foregoing (collectively, the "Collateral"). Such filing shall be in compliance with both the Uniform Commercial Code, as adopted in the state in which the Property is located, and all other applicable laws affecting the perfection of security interests. Borrower shall furnish to CITI, promptly upon recordation, receipted or time stamped copies of the filed financing statements.

5. Authority. Borrower shall furnish to CITI certified documents satisfactory to CITI evidencing Borrower's power and authority to enter into the Mortgage Documents. If Borrower is a corporation, such documents shall include Borrower's Articles of Incorporation, Bylaws, corporate resolution relevant to the Loan and a Certificate of Good Standing from the state of incorporation and the state where the Property is located. If Borrower is a partnership, such documents shall include a copy of the partnership agreement and partnership certificate, and the above-referenced corporate documents for any corporate general partner of Borrower. If Borrower

is a limited liability company, such documents shall include a copy of the Articles of Organization and Operating Agreement and the Certificate of Authenticity or Certificate of Good Standing from the state of organization and the state where the Property is located.

6. Leases. The standard form of lease used at the Property shall be subject to the prior written approval of CITI. All new leases and renewals of existing leases shall be made on the approved standard form of lease unless otherwise agreed to by CITI. There must be no commercial leases affecting the Property, except for any laundry lease and other commercial lease disclosed in writing to and approved in writing by CITI and its counsel prior to the date of this Commitment. Any current commercial lease or laundry lease must be subordinated to the lien of the Mortgage Documents. Borrower agrees that any future commercial lease or laundry lease or renewal of any current commercial lease or laundry lease will contain language acceptable to CITI subordinating said lease to the lien of the Mortgage Documents. There must be no default under any current commercial lease or laundry lease.

7. Borrower's Management Agreement. Borrower shall furnish to CITI a copy of Borrower's management agreement. The management agreement must be with a professional management company and both the management company and the terms of the management agreement must be approved in writing by CITI. Borrower shall not make or permit to be made any changes to the management agreement without the prior written approval of CITI. Without limiting the foregoing, the management agreement must be terminable by owner on 30 days' notice, with or without cause and without payment of any termination fee. If required by CITI, a portion of the management fee may be required to be subordinated to debt service and other amounts payable with respect to the Loan.

8. Rent Roll. If applicable, Borrower shall promptly furnish a copy of the rent roll for the Property, with an updated rent roll to be delivered contemporaneously with closing.

9. Appraisal. CITI shall have received an appraisal of the Property satisfactory to CITI.

10. Opinion of Borrower's Counsel. Borrower shall deliver to CITI a written opinion by Borrower's counsel approved by CITI, addressed to CITI, and in the form furnished or approved by CITI's counsel.

11. Insurance. Borrower shall deliver to CITI an insurance policy evidencing the existence of insurance relating to the Property, which evidence shall include "paid" premium invoices, conforming in all respects to CITI's insurance requirements as provided to Borrower in a separate package, as same may, from time to time, be modified. Such insurance for the Property shall include, without limitation, coverage for acts of terrorism and, if applicable, flood insurance (as more particularly set forth in Paragraph 17 below). In addition, Borrower must deliver prior to closing (i) the original, or a copy certified by the insurance agent, of the policy(ies) of insurance; or (ii) the insurance binder; or (iii) a certificate of insurance (Acord Form 28 (property) or Acord Form 27 (liability) or other form, satisfactory to Lender, provided by the insurance agent; or (iv) original letter from the insurance carrier on the primary layer, signed by an officer of such carrier, attaching the form of insurance policy pursuant to which coverage is being provided, and, if applicable, original letter from each insurance carrier on the excess layers, signed by an officer of such carrier(s) agreeing that it is bound to the form of insurance policy delivered by the primary carrier (*i.e.*, agreeing to "follow form" to the primary carrier). The letter must set forth the date by which the policy will be delivered to CITI, which must not be more than sixty (60) days following closing. All mortgagee/loss payee/additional insured endorsements must be attached to the letter.

12. Permits/Occupancy. Borrower shall deliver to CITI evidence satisfactory to CITI that all applicable governmental authorities have authorized construction of the Improvements and the development and, if applicable, the operation of the Property as a multifamily residential unit,

including, without limitation, occupancy permits (if applicable) and building permits. Any nonresidential occupancy must be approved in writing by CITI.

13. Zoning/Subdivision. Borrower shall deliver to CITI certification from the local governmental authority (i) that the use of the Property as a multifamily residential complex complies with all zoning and subdivision ordinances and regulations applicable to the Property and that it is either a legal, conforming use or a legal, nonconforming use acceptable under CITI's underwriting standards, (ii) that the Property has been properly subdivided, and (iii) that the improvements on the Property can be rebuilt on the same location to their presently existing size, shape and density if partially or totally destroyed.

14. Access/Utilities. Borrower shall deliver to CITI evidence satisfactory to CITI that the Property is located on a publicly dedicated and maintained roadway or acceptable easement thereto, is served by public water and sewer systems, electricity and telephone service, and receives adequate municipal services (fire, police, transportation, among others).

15. Other Compliance. Borrower shall deliver to CITI evidence satisfactory to CITI that the Property, and Borrower's operation thereof, will be constructed in compliance with all local and/or state building, safety, health and fire codes, all clean air and water acts and other Hazardous Materials Laws (as hereinafter defined), and all equal opportunity, anti-discriminatory and fair housing requirements.

16. Survey. Borrower shall deliver to CITI a current, certified, "boundary" or "as-built" (as applicable) ALTA survey of the Property, with monuments, and surveyor's certificate, prepared by a registered engineer or surveyor approved by CITI. The survey and surveyor's certificate shall be satisfactory in form and substance to CITI and shall contain those matters set forth in CITI's survey instructions.

17. Flood Zone Map/Certification/Insurance. Borrower shall deliver to CITI a certification from Borrower's architect, engineer or surveyor stating whether the Property is located in a designated special Flood Plain Hazard area, as designated by appropriate federal agencies. If all or any portion of the Property is at any time during the term of the Loan, located in such an area, Borrower shall provide satisfactory evidence to CITI of the existence of flood insurance policies in the maximum amount required pursuant to applicable laws covering all of the improvements on the Property which lie within, are bounded by, or are in any way affected by such area.

18. Operating Documents. Borrower shall furnish copies of any form documents used for the Property and any equipment leases, licenses, franchises, permits, contracts, and any other agreements required for the operation, use, management or occupancy of the Property, and all such items shall be subject to written approval by CITI.

19. Financial Statements of Borrower and Guarantor. CITI shall receive, for its review and approval detailed financial statements for Borrower, any principal of Borrower and each Guarantor, certified by Borrower, such principal or the Guarantor, as the case may be. CITI may also require updated and/or recertified financial statements as of the Closing Date and again at regular intervals during the Interim Phase.

20. Environmental Assessment Report. CITI shall receive and approve a written report or reports from CITI's independent environmental inspectors confirming that the Property and any site within the vicinity of the Property (i) has not contained and does not currently contain any Hazardous Material or underground storage tanks or any other pollutants that could be detrimental to the Property, human health or the environment, (ii) does not contain radon gas in levels unacceptable to CITI, (iii) complies with all applicable Hazardous Material Laws and has not been identified by any environmental regulatory body as a site containing Hazardous Material or underground storage tanks, (iv) shows no other environmental problem that would bring the

Property within the purview of any federal, state or local environmental law or ordinance, and (v) contains no residual effect due to the removal of storage tanks or Hazardous Material. All deficiencies with respect to any environmental matters which CITI deems to be material shall be corrected by Borrower at its own expense to the satisfaction of CITI. “Hazardous Material” means and includes, without limitation, mold, asbestos and any substance containing asbestos, the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, lead-based paint, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic wastes, materials or substances under the Hazardous Material Laws. “Hazardous Material Laws” mean and include, all federal, state and local statutes, ordinances, regulations, orders, and decrees now or hereafter promulgated in connection with preserving the environment and/or the handling, storage, transport and disposal of Hazardous Material.

21. Separate Tax Parcel(s). The Property shall constitute one or more separate and distinct tax parcels for purposes of all real estate taxes and assessments. There shall be no overlap whatsoever between the Property and any other property which will not be subject to the first lien of the Security Instrument. Borrower shall also furnish the most recent tax bills for the Property.

22. Low-Income Housing Tax Credits (“LIHTC”). CITI must approve any land use restriction agreement or regulatory agreement regulating or restricting the use or manner of operation of the Property and requiring that the Property be operated as a residential rental project occupied by individuals of low income (as provided for in the Treasury Regulations under Section 42(g) of the Internal Revenue Code). Such regulatory agreement must provide that the Property shall at all times be operated in such manner as to comply with the requirements of the Internal Revenue Code, the Treasury Regulations and IRS Rulings for obtaining and for preserving the LIHTC. In addition, the eligibility of the Property for LIHTC shall be evidenced to CITI in a manner satisfactory to CITI. Such regulatory agreement must be reviewed and approved in writing by CITI.

23. Equity and Funding Conditions. If applicable, CITI must approve the partners/members (including the Tax Credit Investor), the applicable investment agreement, and the organizational documents of Borrower. CITI must receive and approve evidence satisfactory to CITI in all respects that the amount of the equity contribution is projected to be at least the level used by CITI in underwriting the transaction. In addition, prior to the Closing Date, CITI must receive and approve evidence satisfactory to CITI in all respects that Borrower (i) has timely received all required equity contributions to be made to Borrower as of the Closing Date, (ii) has fully funded, for the benefit of the Property, all cash required to be invested in the Property as of the Closing Date, and (iii) has made satisfactory arrangements to fund all cash required to be funded after the Closing Date. Borrower must also provide and CITI must approve in writing any developer’s agreement relating to the Property.

24. Interim Phase Budget. If applicable, CITI will require satisfactory evidence that other funds and Loan Proceeds are adequate to complete the Improvements and carry the costs of the Property (including but not limited to interest, taxes, insurance, and operating costs), as determined by CITI based upon its review of scope of work, the Appraisal and other relevant information. Citibank reserves the right to receive, review and approve all project expenditures made prior to closing.

25. Architectural Consultant and Construction Inspector. If applicable, CITI shall have approved an architectural consultant to monitor the progress of the Improvements (the “Architectural Consultant”) and Borrower and the Architectural Consultant shall have executed and delivered to CITI a Construction Monitoring Agreement in form and substance acceptable to CITI, pursuant to which the Architectural Consultant shall agree to certify hard cost progress payments

and to provide the certifications required pursuant to this Commitment upon completion of the Improvements. In addition, CITI will enter into an agreement directly with a construction inspector ("Construction Inspector") for the benefit of CITI, but at the sole cost and expense of Borrower, to review the plans and specifications, contracts and budget for the Improvements and to monitor the progress of the construction of the Improvements in the manner required by CITI.

26. Approved Plans. If applicable, CITI and its engineering consultants and the Construction Inspector shall have received and approved the plans and specifications for the Improvements (such plans and specifications, as approved by CITI are referred to herein as the "Approved Plans"), the budget for completion of the Improvements, a fixed or a guaranteed maximum price contract for completion of the Improvements with a general contractor acceptable to CITI and a construction draw schedule for the Improvements.

27. Change Orders. If applicable, the Approved Plans and the Construction Contract, and any change orders issued thereunder, will be subject to the approval of CITI.

28. Contractors. If applicable, the architect, general contractor and such other contractors and subcontractors with respect to the Property as shall be identified by Borrower and approved by CITI shall have acknowledged the collateral assignment of their respective contracts to CITI and agreed in writing to continue performance on behalf of CITI under their respective contracts without additional cost in the event of a default by Borrower, which agreements shall be in form and substance acceptable to CITI and its counsel.

29. Payment and Performance Bonds. To the extent indicated on Exhibit A hereto, Borrower shall be required to deliver to CITI payment and performance bonds with respect to its contractor and major subcontractors (as determined by CITI).

30. Additional Documents. Upon request by CITI, Borrower shall furnish CITI with any documentation being furnished to any other party lending or investing in the Property (including CITI), including any plans for the Improvements, construction budgets, contracts and disbursement requests. In addition, Borrower shall deliver to CITI all other documents, instruments and other items required by CITI in connection with the financing of the Project.

31. Fees and Expenses. Borrower shall have paid the Origination Fee (as hereinafter defined) and any other costs and expenses then due and payable pursuant to the provisions of this Commitment.

C. Fees and Expenses. Borrower shall be responsible for the following fees and expenses in connection with the financing:

1. Application Fee. Borrower hereby acknowledges requirement of an application fee (the "Application Fee") of \$30,000, which amount shall be non-refundable. In the event additional funds are required to complete CITI's review and due diligence, Borrower will be advised of such costs in advance. Any and all additional costs will be billed to Borrower as they are incurred. The Application Fee is applicable toward third party reports, underwriting and processing (in the minimum amount of \$5,000), and CITI's legal fees.

2. Origination Fee. The Origination Fee as set forth in Exhibit A shall be due and payable on the Closing Date. The Origination Fee reflects a fee payable to CITI in exchange for providing financing for the Project.

3. Conversion Fee. Not applicable.

4. HUD Fees. Borrower hereby acknowledges requirement of a HUD application fee, HUD inspection fee which shall be due at application to HUD for the FHA insurance; the

Ginnie Mae fee which shall be due upon closing; and the rate lock fee which shall be due upon execution of the Rate Lock Agreement and shall be refunded post-closing.

5. Fees and Expenses. Borrower shall pay when due, whether or not a Loan closing occurs, all reasonable and actual expenses, fees and charges with respect to the Loans and their processing and closing, or in any way connected therewith, including, without limitation, appraisal fees, survey costs, title insurance costs, architectural fees, engineering fees, inspection fees, mortgage or similar taxes and all attorneys' fees and legal costs of CITI. Without limiting the foregoing, Sponsor specifically agrees to pay all costs relating to document preparation and review of real estate due diligence items by counsel to CITI.

D. Assignment; Acceptance; Termination.

1. Acceptance. In order for this Commitment to be effective, Sponsor must execute a copy of this Commitment and return it to CITI within five (5) business days after the date first set forth above (the "Outside Acceptance Date"), time being of the essence.

2. Expiration. This Commitment must be accepted, and the closing must occur prior to the Outside Closing Date set forth in Exhibit A , or this Commitment shall terminate and be of no further force and effect. Sponsor may request an extension of this Commitment (not to exceed ninety (90) days), which extension shall be in CITI's sole discretion.

3. Termination. CITI may terminate this Commitment at any time if:

a. Any material adverse change (financial or otherwise) shall occur at any time prior to the Closing Date with respect to (i) the Property, the proposed Improvements, and/or the other security for the Loan, or (ii) the credit of Borrower and/or Sponsor (and/or any of the principals of Borrower and/or Sponsor) or any Guarantor or any other person or entity connected with the Loan, or (iii) any other source of repayment of the Loan.

b. Any part of the Property shall have been taken in condemnation or other like proceeding, or any such proceeding is pending or threatened as of the Closing Date, or any part of the Property is damaged and not repaired to CITI's satisfaction prior to the Closing Date.

c. If requested, certifications of the non-occurrence of (a) and (b) above, in form acceptable to CITI, are not executed by Borrower on the Closing Date, or if Borrower has not delivered on the Closing Date updated personal financial statements for any Guarantor.

d. After acceptance of this Commitment, the Loan is not closed on or prior to the Outside Closing Date (as the same may be extended pursuant to Section E2. hereof).

e. If, in CITI's sole judgment, CITI's underwriting and due diligence indicate the reasonable possibility of a material adverse change in the Property, the proposed Improvements, the Sponsor, the Borrower and/or any Guarantor.

f. If the OFAC representation and warranty in Section F5. is no longer true and correct.

Upon termination, Sponsor shall pay to CITI any other reasonable damages CITI may have incurred due to non-delivery of the Loan. **Sponsor's or Borrower's obligation to pay all amounts due under this Commitment shall survive the termination or expiration of this Commitment.** If Sponsor or Borrower fails or refuses to comply with the terms of this Commitment, CITI, at its option, shall have the right to enforce any rights and remedies it may have at law or in equity,

including, but not limited to, the collection of costs and expenses arising out of such breach, including reasonable attorneys' fees and disbursements.

4. Final Underwriting. By accepting this Commitment, Sponsor expressly acknowledges that the obligation of CITI to provide the Loan is subject to the completion of final loan underwriting by CITI, final CITI loan committee approval, and the satisfaction of any additional or differing conditions including interest rates that may be required by CITI as a result of such committee approval. By accepting this Commitment, Sponsor expressly acknowledges that the obligation of CITI to provide the financing described in this Commitment is subject to the satisfaction of the obligations and terms and conditions required by Citi for acquisition projects.

E. Miscellaneous

1. Further Assurances. Sponsor hereby expressly acknowledges that CITI intends to incur costs upon Sponsor's acceptance of this Commitment. Upon acceptance of the Commitment, Sponsor shall be strictly obligated to close the transaction contemplated hereby. Sponsor acknowledges that failure to close the transaction will subject CITI to substantial costs and damages. Therefore, Sponsor hereby expressly agrees:

- a. To perform all of the requirements, terms and conditions contained herein at the time and in the manner herein and as required by CITI.
- b. Refrain from taking any action that would result in CITI's inability to arrange for the provision of the Loan.
- c. Upon the request of CITI, to re-execute or ratify any of the Mortgage Documents.

2. Indemnification for Brokerage Commissions. Sponsor acknowledges and agrees that any fees due for Loan origination services shall be Sponsor's sole responsibility. Borrower and Sponsor shall indemnify and hold CITI harmless from and against any and all claims, demands and liability for brokerage commissions, assignment fees, finders' fees or other compensation whatsoever arising from the issuance of this Commitment or the making of the Loan that may be asserted against CITI **by any person or entity. Sponsor's and Borrower's obligation to indemnify CITI hereunder shall survive the termination or expiration of this Commitment.**

3. Authorization. Sponsor and the undersigned Guarantor hereby authorize CITI to obtain and forward any and all credit information, including credit reports and financial statements and all other information of any kind received or reasonably required in connection with this Commitment to any potential investor.

4. Exclusivity. The terms and provisions of this Commitment are intended for the sole and exclusive benefit of CITI and Borrower, and not for the benefit of, nor for the purpose of being relied upon, by any other party.

5. OFAC Provisions. Sponsor hereby represents and warrants that no portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity. Sponsor further represents and warrants that to the best of Sponsor's knowledge, after having made diligent inquiry, Sponsor, Borrower, each Person owning a direct or indirect interest in Borrower, each Guarantor, each person owing a direct or indirect interest in each Guarantor, the Property Manager, and each tenant at the Property: (a) is not currently identified on OFAC List, and (b) is not a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States. The Sponsor further acknowledges and agrees that it shall have a continuing obligation during the processing of this Commitment to notify CITI promptly if it knows or has reason to believe that the representations and warranties contained herein are no longer correct. Sponsor has implemented procedures, and

will consistently apply those procedures throughout the term of the Loan, to ensure the foregoing representations and warranties remain true and correct during the term of the Loan. For the purposes hereof, “OFAC List” means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any Requirements of Law, including, without limitation, trade embargos, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States, which OFAC List is accessible through the internet website <http://www.treasury.gov/ofac/downloads/tl1sdn.pdf> and “Person” means an individual, partnership, limited partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

6. Borrower’s Representations. The validity of this Commitment and CITI’s obligations hereunder shall at all times be subject to the accuracy and validity of all information and representations furnished by Sponsor to CITI with regard to the Loan and Tax Credits, which shall have been and shall continue to be true and not misleading in all material respects.

7. Loan Data. All inspections, reports, appraisals, environmental studies or other data submitted to, commissioned for, conducted or produced by or for CITI are for its benefit and use and shall be the property of CITI. No right of inspection or approval contained in this Commitment shall be deemed to impose upon CITI any duty or obligation whatsoever to take any action or to notify any person with respect thereto, and no liability shall be imposed upon any such party and no warranty shall be deemed or construed to arise by reason of any inspection undertaken or approval given by any such party, its agents, employees or representatives, any such inspections and approvals being made solely for the benefit of such party. **The provisions of this paragraph shall survive the termination or expiration of this Commitment.**

8. Discretion. In any instance where the consent or approval of CITI may be given or is required, or where any determination, judgment or decision is to be rendered by CITI under this Commitment, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by CITI (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

9. Waiver. CITI reserves the right, in its sole discretion, to waive in whole or part any of the terms, requirements and conditions in this Commitment, the Mortgage Documents or other documents referenced herein; provided, however, that such waiver shall in no event be construed to constitute a waiver of the applicable terms, requirements or conditions as they may apply in the future.

10. Successors and Assigns. Sponsor acknowledges and agrees that CITI at its option may assign or otherwise transfer the Loan and all documents evidencing and securing the Tax Credits including, but not limited to, this Commitment, to other parties subsequent to the execution of this Commitment. Neither Sponsor nor Borrower may assign its rights, interest, or obligations under this Commitment without first obtaining CITI’s prior written consent. This Commitment shall be binding upon the successors and permitted assigns of Borrower.

11. Governing Law. This Commitment shall be governed by and construed in accordance with the laws of the State of New York. Sponsor agrees that any legal action that may arise out of this Commitment will be commenced only in the United States District Court, Southern District of New York, or New York State Courts sitting in New York County, New York, and Sponsor hereby submits to the jurisdiction of any such court. All Mortgage Documents (other than this Commitment) shall be governed by the laws of the State where the Property is situated. **The**

governing law election with respect to this Commitment shall survive the termination or expiration of this Commitment.

12. WAIVER OF TRIAL BY JURY. SPONSOR AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS PRELIMINARY COMMITMENT OR THE RELATIONSHIP BETWEEN CITI AND BORROWER OR SPONSOR THAT IS TRIABLE OF RIGHT BY A JURY AND WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN BY SPONSOR KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL AND APPLIES TO ALL ACTIONS WHETHER ARISING IN CONTRACT, TORT, EQUITY OR OTHERWISE. **THIS PROVISION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS COMMITMENT.**

13. Survival. The covenants, terms and conditions set forth in this Commitment shall not survive the Closing Date (unless expressly provided to the contrary). In the event of any conflict between this Commitment and the Mortgage Documents, the Mortgage Documents shall prevail.

14. Confidentiality The provisions of this Commitment and all of the terms and conditions contained herein are confidential and Sponsor shall not share this Commitment, or the terms and conditions contained herein, with any third party. **This confidentiality provision shall survive the termination or expiration of this Commitment.**

15. Anti Tying Policy. CITI maintains a policy of strict compliance with the anti-tying provisions of the U.S. Bank Holding Company Act of 1956, as amended, and the regulations issued by the Federal Reserve Board implementing the anti-tying rules (collectively, the "Anti-tying Rules"). Moreover, our credit policies provide that credit must be underwritten in a safe and sound manner and be consistent with Section 23B of the Federal Reserve Act and the requirements of federal law. Consistent with these requirements and our Anti-tying Policy:

- a. The extension of commercial loans or other products or services to you by CITI or any of its subsidiaries will not be conditioned on your taking other products or services offered by CITI or any of its subsidiaries or affiliates, unless such a condition is permitted under an exception to the Anti-tying Rules.
- b. CITI will not vary the price or other terms of any product or service offered by CITI or its subsidiaries on the condition that you purchase another product or service from CITI or any CITI affiliate, unless CITI is authorized to do so under an exception to the Anti-tying Rules.
- c. CITI will not require you to provide property or services to CITI or any affiliate of CITI as a condition to the extension of a commercial loan to you by CITI or any of its subsidiaries, unless such a requirement is reasonably required to protect the safety and soundness of the Loan.
- d. CITI will not require you to refrain from doing business with a competitor of CITI or any of its affiliates as a condition to receiving a commercial loan from CITI or any of its subsidiaries, unless the requirement is reasonably designed to ensure the soundness of the Loan.

[No Further Text on this Page]

If you have any questions relating to this Commitment, or if we can be of any further assistance, please do not hesitate to let us know.

Very truly yours,

CITIBANK. N.A., a national banking association


By: 

Name: Gregory S. Goldberg

Title: Authorized Signatory

The undersigned hereby accepts the foregoing Commitment and agrees to be bound by the terms, requirements and conditions set forth herein.

Date: 4.28.16

SPONSOR:
By: 

Name: Colby Denison

Title: Auth Rep

EXHIBIT A

PRELIMINARY COMMITMENT TERMS

This Exhibit A is an integral part of, and establishes additional terms, conditions and requirements of, the Commitment to which this is annexed.

SUMMARY OF MORTGAGE LOAN TERMS

Project:	DDC Merritt Leisure, Ltd., a 140-unit family project.
Maximum Loan Amount:	An amount estimated to be \$8,300,000
Number of Units:	140
Low-Income Units:	12 units @ 30% of AMI 24 units @ 50% of AMI 79 units @ 60% of AMI 25 units @ Market Rate
Permanent Period Interest Rate:	4.50% (includes 0.25% for MIP) Underwriting assumes .50% rate cushion
Origination Fee:	1.0% of the Maximum Loan Amount.
Guarantor(s):	Anticipated to be Colby Denison.
Outside Closing Date:	150 days from the date of this commitment.
Loan Sizing Criteria:	<u>Maximum Loan to Value: 87%.</u> <u>Minimum Debt Service Coverage Ratio: 1.15</u>
Approved Subordinate Financing:	The terms, conditions and documentation of the Approved Subordinate Financing, if any, including the form of subordination agreement subordinating the Approved Subordinate Financing to the Loan, are subject to the review and approval of HUD and CITI in their sole discretion.

EXHIBIT B

Initial Due Diligence Completed

1. Review of proposed income and expense statements (budget).
2. Review of estimated sources and uses statement.
3. Review of Borrower assumptions.
4. Assumes Colby Denison is the guarantor and meets mortgage credit requirements.

DDC Merritt Leisure, Ltd.

4. Department staff continues to be concerned regarding this development's ability to meet approaching HTC and HOME deadlines. Therefore, please provide a critical path timeline showing key dates for financing approvals and development site plan and building permit approvals.



Critical Path Timeline

DDC Merritt Leisure, Ltd.

Merritt Leisure
Midland, Midland County, Texas

May-16	Submit to HUD
Jun-16	HUD Review
Jul-16	HUD Review
Aug-16	HUD Review and Closing Process
Sep-16	Close Debt & Equity
Oct-16	Construction Commencement
Nov-16	Construction in Process
Dec-16	Construction in Process
Jan-17	Construction in Process
Feb-17	Construction in Process
Mar-17	Construction in Process
Apr-17	Construction in Process
May-17	Construction in Process
Jun-17	Construction in Process
Jul-17	Construction in Process
Aug-17	Construction in Process
Sep-17	Construction in Process
Oct-17	Construction / CO's / Lease-Up
Nov-17	Construction / CO's / Lease-Up
Dec-17	Final CO

RESOLUTION NO. 2016-129

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS COMMITTING TO MAKE A LOAN WITH CONDITIONS TO DDC MERRITT LEISURE, LTD. TO PAY FOR COSTS ASSOCIATED WITH THE PROPOSED MERRITT LEISURE HOUSING DEVELOPMENT; THE PROPOSED DEVELOPMENT IS LOCATED AT THE NORTHEAST QUADRANT OF LEISURE DRIVE AND SOUTH TEXAS LOOP 250 WEST; PROVIDING NO WAIVER OF GOVERNMENTAL IMMUNITY OR SOVEREIGN IMMUNITY; PROVIDING AN EFFECTIVE DATE; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO CERTIFY THE RESOLUTION TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

WHEREAS, the Texas Department of Housing and Community Affairs (the "TDHCA") rules governing the Competitive Housing Tax Credit Program (the "TDHCA Rules") provide for an applicant to be awarded points for a resolution from a unit of local government confirming its commitment of qualifying funding; and

WHEREAS, pursuant to Resolution No. 2015-034 (the "Financing Resolution"), the City of Midland, Texas ("City") committed to provide a loan in the amount of \$1,600,000.00 (the "Loan") to DDC Merritt Leisure, Ltd. (the "Borrower") to pay for costs associated with the proposed Merritt Leisure development of the property located at the northeast quadrant of Leisure Drive and South Texas Loop 250 West, situated in the City of Midland, Texas (the "Project"); and

WHEREAS, in July 2015, the Project was awarded a commitment of Competitive Housing Tax Credits by the TDHCA; and

WHEREAS, due to changes in economic conditions in the City, the Borrower proposed an amendment to its financial and development plans for the Project, including the elimination of certain market rate residential units, which is consistent with the existing and anticipated demand in the area; and

WHEREAS, the Borrower has advised that the Project would benefit from the interest rates and terms associated with mortgage insured financing from the US Department of Housing and Urban Development, but that the Loan terms would not allow the Borrower to access such financing; and

WHEREAS, in lieu of the Loan, the City proposed to benefit the Project with a Public Improvement Development Agreement under which the City would contribute on-half and the Borrower would contribute on-half of the costs of streets, curbs, gutters, sidewalks, and traffic controls adjacent to the Project (the "Improvements"), pursuant to Resolution No. 2016-012 (the "Development Resolution"); and

WHEREAS, the City and Borrower believed that the benefits of the Public Improvement Development Agreement would outweigh the benefits of the Loan and allow the Borrower to access more favorable financing; and

WHEREAS, the Borrower and City believed that a change of City participation from the Loan to the Improvements would comply with the TDHCA Rules because it would not change the Borrower's competitive position with regard to the Competitive Housing Tax Credit Program award; and

WHEREAS, when the Borrower presented its proposed amendment to the TDHCA, including the change of City participation from the Loan to the Improvements, such amendment request was rejected; and

WHEREAS, the City is committed to the Project and the development of affordable housing in this revitalization area, and is willing to reinstate the Financing Resolution to the extent required by the TDHCA;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Development Resolution remains in full force and effect, to be utilized if the TDHCA permits the City to provide the Improvements in lieu of the Loan.

SECTION TWO. That, notwithstanding any provision of the Development Resolution to the contrary, the Financing Resolution is hereby reinstated to be in full force and effect, to be utilized if the TDHCA requires the City to provide the Loan in lieu of the Improvements.

SECTION THREE. That if the Loan is made under this authority, it will be evidenced by a Promissory Note (the “Note”), which will have a term of at least 15 years with a 30-year amortization and shall bear interest at a rate equal to 3% per annum.

SECTION FOUR. That this Resolution constitutes the commitment of the City to make the Loan to Borrower on the terms and conditions described herein (this “Loan Commitment”). This Loan Commitment is conditioned upon: (1) the City’s receipt and approval of loan documents in final form, with the approval or disapproval of the loan documents being in the sole discretion of the City; (2) no material adverse change in Borrower or the Project or the circumstances surrounding Borrower’s development of the Project that would, in the City’s sole judgment, make the Loan unacceptable to the City; (3) approval by the City’s legal counsel and financial advisors of the documents evidencing the Loan; (4) Borrower maintains its commitment of Tax Credits for the Project from the TDHCA; (5) availability to the City of collateral sources provided by Borrower upon such terms as are acceptable to the City in its sole discretion and in an amount that the City finds sufficient to fund the Loan at the time of closing; and (6) Borrower paying all costs associated with the Loan including City loan origination fees, attorney fees, financial advisor fees, and all other related costs and fees assessed by the City.

SECTION FIVE. That the Loan Commitment automatically expires, without any further action needed by the City, upon the Borrower’s failure to satisfy any one of the numbered conditions described above.

SECTION SIX. That this Resolution does not constitute an agreement for providing goods and/or services to the City as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and that the City does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. The City expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this Resolution constitutes a waiver of the City’s governmental immunity, and this Resolution shall not constitute nor be

interpreted as a waiver of the City's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of the City's governmental immunity for the benefit of any third party.

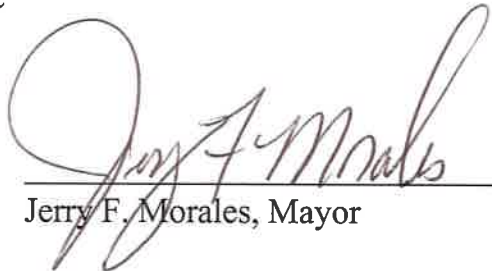
SECTION SEVEN. That for and on behalf of the governing body of the City of Midland, Texas, Amy M. Turner, City Secretary, is hereby authorized, empowered, and directed to certify this resolution to the TDHCA.

SECTION EIGHT. That this resolution shall become effective on April 27, 2016.

On motion of Council member Lacy , seconded by Council member Robnett , the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the 26th day of April , A.D., 2016, by the following vote:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None



Jerry F. Morales, Mayor

ATTEST:



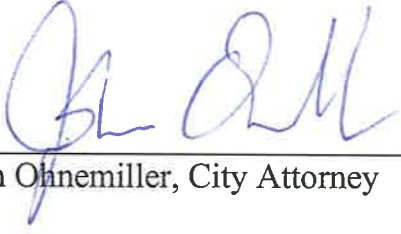
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:



Courtney Sharp, City Manager

APPROVED ONLY AS TO FORM:



A handwritten signature in blue ink, appearing to read 'JOHN OHNEMILLER', is written over a horizontal line.

John Ohnemiller, City Attorney

Option B

For informational purposes. We wish to show that keeping the 30 year amortization on the HOME funds reducing our ability to offer more affordable housing and therefore simultaneously providing Leisure with the best foundation for long term success.

Rent Schedule

Rent Schedule (Continued)

		% of LI	% of Total	
HOUSING TAX CREDITS	TC30%	10%	8%	11
	TC40%			0
	TC50%	20%	16%	22
	TC60%	70%	54%	76
	HTC LI Total			109
	EO			0
	MR			31
	MR Total			31
	Total Units			140
MORTGAGE REVENUE BOND	MRB30%			0
	MRB40%			0
	MRB50%			0
	MRB60%			0
	MRB LI Total			0
	MRBMR			0
	MRBMR Total			0
	MRB Total			0

		% of LI	% of Total	
HOUSING TRUST FUND	HTF30%			0
	HTF40%			0
	HTF50%			0
	HTF60%			0
	HTF80%			0
	HTF LI Total			0
	MR			0
	MR Total			0
	HTF Total			0
HOME	30%			0
	LH/50%	100%	100%	29
	HH/60%			0
	HH/80%			0
	HOME LI Total			29
	EO			0
	MR			0
	MR Total			0
HOME Total			29	
OTHER	Total OT Units			0

BEDROOMS	0			13
	1			56
	2			71
	3			0
	4			0
	5			0

ACQUISITION + HARD			
Cost Per Sq Ft	\$113.89		
HARD			
Cost Per Sq Ft	\$113.89		
BUILDING			
Cost Per Sq Ft	\$ 74.94		
		Total Points claimed:	12

Applicants are advised to ensure that figure is not rounding down to the maximum dollar figure to support the elected points.

Operating Expenses

ANNUAL OPERATING EXPENSES

<u>General & Administrative Expenses</u>			
Accounting	\$	9,600	
Advertising	\$	9,500	
Legal fees	\$	1,000	
Leased equipment	\$	3,464	
Postage & office supplies	\$	5,000	
Telephone	\$	5,400	
Other	<i>Other office expense</i>	\$ 11,000	
Other	<i>HAA Dues, Forms, Uniforms</i>	\$ 2,000	
Total General & Administrative Expenses:			\$ 46,964
Management Fee:	Percent of Effective Gross Income:	5.00%	\$ 64,951
<u>Payroll, Payroll Tax & Employee Benefits</u>			
Management	\$	99,791	
Maintenance	\$	73,888	
Other	<i>Taxes and benefits</i>	\$ 39,047	
Other			
Total Payroll, Payroll Tax & Employee Benefits:			\$ 212,726
<u>Repairs & Maintenance</u>			
Elevator	\$	9,000	
Exterminating	\$	4,000	
Grounds	\$	23,000	
Make-ready	\$	6,000	
Repairs	\$	29,000	
Pool	\$	2,000	
Other	<i>Fire Safety</i>	\$ 4,000	
Other			
Total Repairs & Maintenance:			\$ 77,000
<u>Utilities (Enter Only Property Paid Expense)</u>			
Electric	<i>Exist prop adj for local \$</i>	\$ 20,711	
Natural gas			
Trash	<i>Existing portfolio</i>	\$ 21,390	
Water/Sewer	<i>Exist prop adj for local \$</i>	\$ 33,919	
Other			
Other			
Total Utilities:			\$ 76,020
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.33	\$ 36,400
<u>Property Taxes:</u>			
Published Capitalization Rate:	10.00%	Source:	Property Tax Advocates
Annual Property Taxes	\$	66,467	
Payments in Lieu of Taxes	\$		
Total Property Taxes:			\$ 66,467
Reserve for Replacements:	Annual reserves per unit:	\$ 250	\$ 35,000
<u>Other Expenses</u>			

Cable TV	\$		
Supportive Services (Staffing/Contracted Services)	\$	6,000	
TDHCA Compliance fees	\$	5,346	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer <u>Only</u>)	\$		
Security	\$	1,325	
Other	\$		
Other	\$		
Total Other Expenses:			\$ 12,671
TOTAL ANNUAL EXPENSES	Expense per unit: \$	4487	\$ 628,199
	Expense to Income Ratio:	48.36%	
NET OPERATING INCOME (before debt service)			\$ 670,823
Annual Debt Service			
<i>Conventional Loan</i>	\$	431,886	
<i>TDHCA HOME Funds</i>	\$	101,185	
<i>City of Midland</i>	\$		
	\$		
TOTAL ANNUAL DEBT SERVICE	Debt Coverage Ratio:	1.26	\$ 533,071
NET CASH FLOW			\$ 137,752

Pro Forma

15 Year Rental Housing Operating Pro Forma

All Programs Must Complete the following:

The pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of market rents, restricted rents, rental income and expenses), and principal and interest debt service. The Department uses an annual growth rate of 2% for income and 3% for expenses. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

INCOME	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15
POTENTIAL GROSS ANNUAL RENTAL INCOME	\$1,360,788	\$1,388,004	\$1,415,764	\$1,444,079	\$1,472,961	\$1,626,268	\$1,795,531
Secondary Income	\$ 43,560	\$ 44,431	\$ 45,320	\$ 46,226	\$ 47,151	\$ 52,058	\$ 57,476
POTENTIAL GROSS ANNUAL INCOME	\$1,404,348	\$1,432,435	\$1,461,084	\$1,490,305	\$1,520,111	\$1,678,326	\$1,853,007
Provision for Vacancy & Collection Loss	(\$105,326)	(\$107,433)	(\$109,581)	(\$111,773)	(\$114,008)	(\$125,874)	(\$138,976)
Rental Concessions	\$0						
EFFECTIVE GROSS ANNUAL INCOME	\$1,299,022	\$1,325,002	\$1,351,502	\$1,378,532	\$1,406,103	\$1,552,451	\$1,714,032
EXPENSES							
General & Administrative Expenses	\$46,964	\$48,373	\$49,824	\$51,319	\$52,858	\$61,277	\$71,037
Management Fee	\$ 64,951	\$ 66,900	\$ 68,907	\$ 70,974	\$ 73,103	\$ 84,746	\$ 98,244
Payroll, Payroll Tax & Employee Benefits	\$ 212,726	\$ 219,108	\$ 225,681	\$ 232,451	\$ 239,425	\$ 277,559	\$ 321,767
Repairs & Maintenance	\$ 77,000	\$ 79,310	\$ 81,689	\$ 84,140	\$ 86,664	\$ 100,468	\$ 116,469
Electric & Gas Utilities	\$ 20,711	\$ 21,333	\$ 21,973	\$ 22,632	\$ 23,311	\$ 27,024	\$ 31,328
Water, Sewer & Trash Utilities	\$ 55,309	\$ 56,968	\$ 58,677	\$ 60,437	\$ 62,250	\$ 72,165	\$ 83,659
Annual Property Insurance Premiums	\$ 36,400	\$ 37,492	\$ 38,617	\$ 39,775	\$ 40,969	\$ 47,494	\$ 55,058
Property Tax	\$ 66,467	\$ 68,461	\$ 70,515	\$ 72,630	\$ 74,809	\$ 86,724	\$ 100,537
Reserve for Replacements	\$ 35,000	\$ 36,050	\$ 37,132	\$ 38,245	\$ 39,393	\$ 45,667	\$ 52,941
Other Expenses	\$ 12,671	\$ 13,051	\$ 13,443	\$ 13,846	\$ 14,261	\$ 16,533	\$ 19,166
TOTAL ANNUAL EXPENSES	\$628,199	\$647,045	\$666,456	\$686,450	\$707,043	\$819,657	\$950,207
NET OPERATING INCOME	\$670,823	\$677,957	\$685,046	\$692,082	\$699,060	\$732,794	\$763,824
DEBT SERVICE							
First Deed of Trust Annual Loan Payment	\$431,886	\$431,886	\$431,886	\$431,886	\$431,886	\$431,886	\$431,886
Second Deed of Trust Annual Loan Payment	101,185	101,185	101,185	101,185	101,185	101,185	101,185
Third Deed of Trust Annual Loan Payment	0	0	0	0	0	0	0
Other Annual Required Payment							
Other Annual Required Payment							
NET CASH FLOW	\$137,752	\$144,887	\$151,975	\$159,012	\$165,989	\$199,724	\$230,754
Debt Coverage Ratio	1.26	1.27	1.29	1.30	1.31	1.37	1.43
Other (Describe)							
Other (Describe)							

By signing below I (we) are certifying that the above 15 Year pro forma, rent schedule and operating expense schedule have been reviewed and generally meet current lender underwriting parameters for the loan terms indicated in the term sheet. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)

Phone: _____

Email: _____

Signature, Authorized Representative, Construction or
Permanent Lender

Printed Name

Date

Development Cost Schedule

Sources & Uses

Financing Narrative and Summary of Sources and Uses

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

Financing Participants	Funding Description	Construction Period		Lien Position	Permanent Period					Lien Position
		Loan/Equity Amount	Interest Rate (%)		Loan/Equity Amount	Interest Rate (%)	Amort - ization	Term (Yrs)	Syndication Rate	
Debt										
TDHCA	HOME	\$2,000,000	3%	2	\$ 2,000,000	3%	30	30		2
TDHCA	TCAP Loan Repayments	\$0	0%		\$ -	0%	0	0		
TDHCA	Mortgage Revenue Bond	\$0	0%		\$ -	0%	0	0		
Citi	Conventional/FHA	\$8,300,000	4.25%	1						
Citi	Conventional/FHA				\$ 8,300,000	4.25%	40	40		1
City of Midland (See Offsite Costs)	Local Government Loan				\$ 225,861					
***See city resolution										
Citi Bridge Loan	Conventional Loan	\$3,008,865	2.70%	3						
Third Party Equity										
RBC	HTC	\$ 786,147	\$ 1,634,842		\$ 8,174,212				1.04	
Grant										
Deferred Developer Fee										
DDC Investments, Ltd		\$ 1,524,422			\$ 340,729					
Other										
Total Sources of Funds		\$ 16,468,129			\$ 19,040,802					
Total Uses of Funds					\$ 19,040,802					

Option C

	Amount	Rate	Amortization	Term
CBoT	\$ 6,400,000	5.75%	30	15
TDHCA HOME	\$ 2,000,000	3.00%	30	30
City of Midland	\$ 1,600,000	3.00%	15	30

For informational purposes. We wish to show that the inclusion of the Midland loan in the amount of \$1.6 million will force Leisure to use Community Bank of Texas as it's interim and permanent financing source. As a result, no additional affordable housing is possible, and the financial stability of the deal is jeopardized.

Rent Schedule

Non Rental Income	\$12.00	per unit/month for:	<i>App & Late Fees, Laundry</i>	1,680
Non Rental Income	13.93	per unit/month for:	<i>Parking (Covered Spaces)</i>	1,950
Non Rental Income	0.00	per unit/month for:		
+ TOTAL NONRENTAL INCOME	\$25.93	per unit/month		3,630
= POTENTIAL GROSS MONTHLY INCOME				120,539
- Provision for Vacancy & Collection Loss		% of Potential Gross Income:	7.50%	(9,040)
- Rental Concessions (<i>enter as a negative number</i>)			Enter as a negative value	
= EFFECTIVE GROSS MONTHLY INCOME				111,499
x 12 = EFFECTIVE GROSS ANNUAL INCOME				1,337,983

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Rent Schedule (Continued)

		% of LI	% of Total	
HOUSING TAX CREDITS	TC30%	10%	7%	10
	TC40%			0
	TC50%	22%	15%	21
	TC60%	68%	47%	66
	HTC LI Total			97
	EO	Same as Orig App		0
	MR			43
	MR Total			43
	Total Units			140
	MORTGAGE REVENUE BOND	MRB30%		
MRB40%				0
MRB50%				0
MRB60%				0
MRB LI Total				0
MRBMR				0
MRBMR Total				0
MRB Total				0

		% of LI	% of Total	
HOUSING TRUST FUND	HTF30%			0
	HTF40%			0
	HTF50%			0
	HTF60%			0
	HTF80%			0
	HTF LI Total			0
	MR			0
	MR Total			0
	HTF Total			0
	HOME	30%		
LH/50%		100%	100%	28
HH/60%				0
HH/80%				0
HOME LI Total				28
EO				0
MR				0
MR Total				0
HOME Total			28	
OTHER	Total OT Units			0

BEDROOMS	0			13
	1			56
	2			71
	3			0
	4			0
	5			0

ACQUISITION + HARD			
Cost Per Sq Ft	\$113.89		
HARD			
Cost Per Sq Ft	\$113.89		
BUILDING			
Cost Per Sq Ft	\$ 74.94		
Total Points claimed:			12

Applicants are advised to ensure that figure is not rounding down to the maximum dollar figure to support the elected points.

Operating Expenses

ANNUAL OPERATING EXPENSES

<u>General & Administrative Expenses</u>			
Accounting	\$	9,600	
Advertising	\$	9,500	
Legal fees	\$	1,000	
Leased equipment	\$	3,464	
Postage & office supplies	\$	5,000	
Telephone	\$	5,400	
Other	<i>Other office expense</i>	\$ 11,000	
Other	<i>HAA Dues, Forms, Uniforms</i>	\$ 2,000	
Total General & Administrative Expenses:			\$ 46,964
Management Fee:	Percent of Effective Gross Income:	5.00%	\$ 66,899
<u>Payroll, Payroll Tax & Employee Benefits</u>			
Management	\$	99,791	
Maintenance	\$	73,888	
Other	<i>Taxes and benefits</i>	\$ 39,047	
Other			
Total Payroll, Payroll Tax & Employee Benefits:			\$ 212,726
<u>Repairs & Maintenance</u>			
Elevator	\$	9,000	
Exterminating	\$	4,000	
Grounds	\$	23,000	
Make-ready	\$	6,000	
Repairs	\$	29,000	
Pool	\$	2,000	
Other	<i>Fire Safety</i>	\$ 4,000	
Other			
Total Repairs & Maintenance:			\$ 77,000
<u>Utilities (Enter Only Property Paid Expense)</u>			
Electric	<i>Exist prop adj for local \$</i>	\$ 20,711	
Natural gas			
Trash	<i>Existing portfolio</i>	\$ 21,390	
Water/Sewer	<i>Exist prop adj for local \$</i>	\$ 33,919	
Other			
Other			
Total Utilities:			\$ 76,020
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.33	\$ 36,400
<u>Property Taxes:</u>			
Published Capitalization Rate:	10.00%	Source:	Property Tax Advocates
Annual Property Taxes	\$	69,641	
Payments in Lieu of Taxes	\$		
Total Property Taxes:			\$ 69,641
Reserve for Replacements:	Annual reserves per unit:	\$ 250	\$ 35,000
<u>Other Expenses</u>			

Cable TV	\$		
Supportive Services (Staffing/Contracted Services)	\$	6,000	
TDHCA Compliance fees	\$	4,866	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer <u>Only</u>)	\$		
Security	\$	1,325	
Other	\$		
Other	\$		
Total Other Expenses:			\$ 12,191
TOTAL ANNUAL EXPENSES	Expense per unit: \$	4520	\$ 632,841
	Expense to Income Ratio:	47.30%	
NET OPERATING INCOME (before debt service)			\$ 705,142
Annual Debt Service			
<i>Conventional Loan</i>	\$	448,184	
<i>TDHCA HOME Funds</i>	\$	101,185	
<i>City of Midland</i>	\$	80,948	
	\$		
TOTAL ANNUAL DEBT SERVICE	Debt Coverage Ratio:	1.12	\$ 630,317
NET CASH FLOW			\$ 74,825

Not Feasible given current market rents.

Pro Forma

15 Year Rental Housing Operating Pro Forma

All Programs Must Complete the following:

The pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of market rents, restricted rents, rental income and expenses), and principal and interest debt service. The Department uses an annual growth rate of 2% for income and 3% for expenses. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

INCOME	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15
POTENTIAL GROSS ANNUAL RENTAL INCOME	\$1,402,908	\$1,430,966	\$1,459,585	\$1,488,777	\$1,518,553	\$1,676,605	\$1,851,107
Secondary Income	\$ 43,560	\$ 44,431	\$ 45,320	\$ 46,226	\$ 47,151	\$ 52,058	\$ 57,476
POTENTIAL GROSS ANNUAL INCOME	\$1,446,468	\$1,475,397	\$1,504,905	\$1,535,003	\$1,565,703	\$1,728,663	\$1,908,584
Provision for Vacancy & Collection Loss	(\$108,485)	(\$110,655)	(\$112,868)	(\$115,125)	(\$117,428)	(\$129,650)	(\$143,144)
Rental Concessions	\$0						
EFFECTIVE GROSS ANNUAL INCOME	\$1,337,983	\$1,364,743	\$1,392,037	\$1,419,878	\$1,448,276	\$1,599,013	\$1,765,440
EXPENSES							
General & Administrative Expenses	\$46,964	\$48,373	\$49,824	\$51,319	\$52,858	\$61,277	\$71,037
Management Fee	\$ 66,899	\$ 68,906	\$ 70,973	\$ 73,103	\$ 75,296	\$ 87,288	\$ 101,191
Payroll, Payroll Tax & Employee Benefits	\$ 212,726	\$ 219,108	\$ 225,681	\$ 232,451	\$ 239,425	\$ 277,559	\$ 321,767
Repairs & Maintenance	\$ 77,000	\$ 79,310	\$ 81,689	\$ 84,140	\$ 86,664	\$ 100,468	\$ 116,469
Electric & Gas Utilities	\$ 20,711	\$ 21,333	\$ 21,973	\$ 22,632	\$ 23,311	\$ 27,024	\$ 31,328
Water, Sewer & Trash Utilities	\$ 55,309	\$ 56,968	\$ 58,677	\$ 60,437	\$ 62,250	\$ 72,165	\$ 83,659
Annual Property Insurance Premiums	\$ 36,400	\$ 37,492	\$ 38,617	\$ 39,775	\$ 40,969	\$ 47,494	\$ 55,058
Property Tax	\$ 69,641	\$ 71,730	\$ 73,882	\$ 76,099	\$ 78,382	\$ 90,866	\$ 105,338
Reserve for Replacements	\$ 35,000	\$ 36,050	\$ 37,132	\$ 38,245	\$ 39,393	\$ 45,667	\$ 52,941
Other Expenses	\$ 12,191	\$ 12,557	\$ 12,933	\$ 13,321	\$ 13,721	\$ 15,906	\$ 18,440
TOTAL ANNUAL EXPENSES	\$632,841	\$651,826	\$671,381	\$691,522	\$712,268	\$825,714	\$957,229
NET OPERATING INCOME	\$705,142	\$712,916	\$720,656	\$728,356	\$736,008	\$773,299	\$808,211
DEBT SERVICE							
First Deed of Trust Annual Loan Payment	\$448,184	\$448,184	\$448,184	\$448,184	\$448,184	\$448,184	\$448,184
Second Deed of Trust Annual Loan Payment	101,185	101,185	101,185	101,185	101,185	101,185	101,185
Third Deed of Trust Annual Loan Payment	80,948	80,948	80,948	80,948	80,948	80,948	80,948
Other Annual Required Payment							
Other Annual Required Payment							
NET CASH FLOW	\$74,825	\$82,599	\$90,339	\$98,039	\$105,691	\$142,983	\$177,894
Debt Coverage Ratio	1.12	1.13	1.14	1.16	1.17	1.23	1.28
Other (Describe)							
Other (Describe)							

By signing below I (we) are certifying that the above 15 Year pro forma, rent schedule and operating expense schedule have been reviewed and generally meet current lender underwriting parameters for the loan terms indicated in the term sheet. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)

Phone: _____

Email: _____

Signature, Authorized Representative, Construction or
Permanent Lender

Printed Name

Date

Development Cost Schedule

Sources & Uses

Financing Narrative and Summary of Sources and Uses

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

Financing Participants	Funding Description	Construction Period		Lien Position	Permanent Period					Lien Position
		Loan/Equity Amount	Interest Rate (%)		Loan/Equity Amount	Interest Rate (%)	Amort - ization	Term (Yrs)	Syndication Rate	
Debt										
TDHCA	HOME	\$2,000,000	3%	2	\$ 2,000,000	3%	30	30		2
TDHCA	TCAP Loan Repayments	\$0	0%		\$ -	0%	0	0		
TDHCA	Mortgage Revenue Bond	\$0	0%		\$ -	0%	0	0		
CBoT	Conventional/FHA	\$11,100,000	4.00%	1						
CBoT	Conventional/FHA				\$ 6,400,000	5.75%	30	15		1
City of Midland	Local Government Loan			3	\$ 1,600,000	3.00%	30	15		3
Third Party Equity										
RBC	HTC	\$ 786,147	\$ 1,603,419		\$ 8,017,096				1.02	
Grant										
Deferred Developer Fee										
DDC Investments, Ltd		\$ 1,510,713			\$ 1,059,997					
Other										
	Total Sources of Funds	\$ 16,214,132			\$ 19,077,093					
	Total Uses of Funds				\$ 19,077,093					

3b

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
MAY 26, 2016

Presentation, Discussion, and Possible Action regarding a Placed in Service deadline extension for a Development pursuant to the *Force Majeure* provision in §11.6(5) of the 2015 Qualified Allocation Plan for Emma Finke Villas (HTC # 13119)

RECOMMENDED ACTION

WHEREAS, Emma Finke Villas was allocated \$391,709 in 9% Housing Tax Credits in 2013 for the rehabilitation of 76 multifamily units in Beeville;

WHEREAS, the Development Owner returned the 2013 tax credits and received a re-allocation of credits via a 2015 Carryover Allocation Agreement pursuant to the *Force Majeure* provision of §11.6(5) of the 2015 QAP;

WHEREAS, the Development Owner requested an extension to the Placed in Service deadline and received approval by the Governing Board on December 17, 2015, to extend the deadline to occur on or before March 7, 2016;

WHEREAS, the Owner notified the Department that the Placed in Service deadline was not met and is requesting a second extension to the Placed in Service deadline due to additional delays caused by materials and manpower shortages in this area; and

WHEREAS, under 10 TAC §10.405(d), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

NOW, therefore, it is hereby

RESOLVED, that the requested extension is approved and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Emma Finke Villas is located in Beeville and was awarded \$391,709 in annual housing tax credits in 2013 under the 9% Housing Tax Credit program. The property consists of 16 buildings containing a total of 76 units restricted at or below 60% of AMI. The Owner, TX Kennedy Apartments, Ltd. and its General Partner, TX Kennedy Apartments I, LLC, are owned and managed by The City of Beeville Housing Authority, a non-profit corporation. The Special Limited Partner, Texas Kennedy Apartments II, LLC, and Co-Developers are owned by Adrian Iglesias and Rick Deyoe.

In September 2015 the Development Owner requested an extension to the Placed in Service deadline through the *Force Majeure* provision in the 2015 Qualified Allocation Plan. At that time, the Development Owner cited delays in construction progress attributed to vandalism and fire which destroyed one of the buildings in February 2015, and the subsequent lengthy legal, insurance, structural investigations and administrative procedures related to reconstruction activities. Additionally, the owner stated that significant and unusual rainfall between January 2015 and June 2015 delayed construction progress as well, noting 61 days of delay due to weather. The Development Owner's request was presented to the Governing Board at its meeting of December 17, 2015, commensurate with the amount of delay evidenced in the original request staff recommended and the Board approved the return and reallocation of 2013 tax credits and a placement in service by March 7, 2016.

By the time the 2015 Carryover Allocation Agreement was issued and executed by the Department and Development Owner at the end of December 2015, the owner updated the anticipated completion date and expected to be placed in service no later than April 30, 2016. The Carryover agreement therefore anticipated and the owner certified that each building for which the allocation is made will be placed in service by April 30, 2016 but no later than December 31, 2016. Likewise, the Cost Certification submission deadline was also extended to June 15, 2016.

On April 28, 2016, the Development Owner notified the Department that the anticipated placed in service deadline of April 30, 2016, (as required in the 2015 Carryover Allocation Agreement) could not be met, and subsequently filed a formal request to extend the placed in service deadline to July 15, 2016. According to the owner, the additional delays in construction and reason for this second request to the placed in service deadline is due to additional hardship in keeping subcontractors to finish the construction of this development. The owner's letter states that the general contractor has replaced 50% of the subcontractors for non-performance on this development. Major markets in Texas are pulling all subcontractors and leaving rural markets like Beeville without manpower. The Owner has verbally reported to staff that the general contractor has acquired the necessary subcontractors to complete the rehabilitation activities by the end of June 2016, and all buildings will be certified for occupancy on or before July 15, 2016.

The Development consists of 16 buildings. Buildings 1 – 3 received Certificates of Occupancy (“COs”) in September 2015, buildings 4 – 6 and 16 received COs in November 2015, and building 7 received a CO in December 2015. Buildings 8 and 9 received COs in April 2016. It is anticipated that buildings 10 – 12 will receive COs in June 2016, and buildings 13 – 15 on or before July 15, 2016. The latest Construction Status Report (“CSR”) submitted for Emma Finke Villas was in April 2016, and reflected that the development was 80% complete as of February 2016. Additionally, the third party construction consultant's last field observation report reflects their estimated construction completion date to be June 2016.

Staff is concerned with habitually extending the placed in service deadline beyond the previously extended deadline for the submission of the cost certification documentation as it relates to the Department's ability to recapture unused credits. In this case the Owner does not anticipate any unused credits due to the increased costs associated with attracting subcontractors from the major markets to the development. Furthermore, the Owner is aware of the penalty fee associated with unused credits pursuant to the Uniform Multifamily Rules, Subchapter G, 10 TAC §10.901.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC § 10.405(d); however, extensions are only considered in this section if the original deadline associated with carryover, the 10 Percent Test, or cost certification requirements will not be met. As a result, staff has

determined in accordance with provisions in 10 TAC § 10.405(d), that the Owner's request warrants Board approval due to extenuating circumstances stated in the request and summarized herein.

Staff recommends the requested extension of the placed in service deadline to July 15, 2016, and an extension of the submission of the cost certification to August 15, 2016.



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May 18, 2016

Mr. Tom Gouris
Deputy Executive Director for Housing Programs
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Emma Finke Villas in Bee County, Texas (the "**Development**")
TDHCA No. 15341 (fka No. 13119)

Dear Mr. Gouris:

Our firm represents TX Kennedy Apartments, Ltd. ("**Owner**") and this letter is sent on its behalf. Owner received an allocation of low-income housing tax credits ("**Tax Credits**") from the Texas Department of Housing and Community Affairs ("**TDHCA**") for the construction of the Development. The Owner had previously requested and received approval from staff and the board to extend the placed in service deadline pursuant to the *Force Majeure* provision of the QAP on December 17, 2015.

Pursuant to the new 2015 Carryover Agreement, Owner is required to place the Development in Service by an anticipated date of April 30, 2016 but no later than December 31, 2016. Unfortunately, due to the following matters, construction of the Project was significantly delayed and Owner has not been able to place several buildings in service prior to the anticipated date in service prior to April 30, 2016:

1. As previously stated in the original extension request, the majority of the delay had been attributed to the long and arduous USDA financing process, the phasing of construction due to the relocation of the tenants, the destruction created by the vandalized fire that destroyed building 4 and the excessive rainfall that adversely effected the development construction schedule during the 2015 weather events. These attributed delays have continued to affect the progress of construction.

2. There are 16 buildings in the Development. At this time, buildings 1 through 7 and 16 are completed and occupied. Buildings 8 and 9 are complete, with certificates of occupancy. Due to the phasing of the construction for tenant relocation, a small amount of construction for buildings 10 through 15 remains. In the past 6 months, the general contractor has experienced additional hardship as it relates to the subcontractors completing the development. All the major subs are traveling from Austin, San Antonio and Houston. It has been a difficult task getting the subcontractor crews pulled off jobs in these major markets to complete the final work needed for the Development. The general contractor has replaced 50% of these subcontractors for non-performance. The major subs like the electrician and plumbers cannot be replaced because they hold the City of Beeville electrical and plumbing permits and it would take longer to replace these subs and permits than to wait for them to be available. Major markets in Texas are pulling all subcontractors and leaving rural markets like Beeville, Texas without manpower. For example:

FRAMING: The original framing contractor, KTP, was unable to provide adequate manpower on a routine basis from the outset of the project, so their contract was never fully executed and voided. The second framing contractor, Bougambilias Construction, was awarded the job on February 27, 2015. This change cost a 2 week delay on the Development. Bougambilias Construction was then unable to provide adequate manpower starting in early December of 2015, so they were supplemented with M&A Framing for a period of about 30 days. The inability of Bougambilias to properly staff the Development resulted in another 2 week delay on the Development.

CONCRETE: The original concrete subcontractor, Bougambilias Construction, was unable to provide materials and adequate manpower at Emma Finke starting in early December 2015. From this point, the general contractor's personnel have been forming and pouring the flatwork associated with this Development. The inability of Bougambilias to properly staff the Development resulted in a 2 week delay.

ROOFING: The original roofing subcontractor, Bougambilias Construction, was unable to provide materials and adequate manpower at Emma Finke starting in early December 2015. From this point, the general contractor hired local roofer, Raymundo Mendez to complete this scope of work. The inability of Bougambilias to properly staff the Development and the associated change in subcontractor resulted in a 4 week delay.

HVAC: The original HVAC subcontractor, Omega Mechanical, was unable to provide materials and adequate manpower at Emma Finke starting in April of 2016. The general contractor is currently in the process of hiring a new HVAC subcontractor. To date, Omega's inability to adequately staff this project has caused a 3 week delay.

DRYWALL: The original drywall contractor, All Points Construction, was unable to provide materials on a timely basis and adequate manpower starting in November of 2015. From this point, the general contractor hired a local drywall company, CS Drywall, to complete this scope of work. The

Mr. Tom Gouris
May 18, 2016
Page 3

inability of All Points to adequately staff this project and the associated change in subcontractor resulted in a 4 week delay on the Development.

PAINT: The original paint contractor, All Points Construction, was unable to provide materials on a timely basis and adequate manpower starting in November of 2015. From this point, the general contractor hired a local painting company, Hector Munoz, to complete this scope of work. The inability of All Points to adequately staff this project and the associated change in subcontractor resulted in a 2 week delay on the Development.

FLOORING: The original flooring and ceramic tile subcontractor, Pro-Rock, was unable to provide materials and staffing for the project from the outset, so their subcontract was voided prior to its execution. The general contractor was forced to re-bid and hire a replacement subcontractor, Impact Floors. This change in subcontractors resulted in a 2 week delay.


APPLIANCES: The original appliance supplier, Sears, was unable to guarantee timely delivery to Beeville, starting in February of 2016. As a result, the general contractor was forced to re-bid the project and hire a replacement, Whirlpool. This change in suppliers has resulted in a 3 week delay and counting, as the Development is still waiting on its first delivery from Whirlpool.

DOOR AND HARDWARE INSTALLER: The original door and hardware installation contractor, MBS, was unable to provide adequate manpower starting in November of 2015. From this point, the general contractor hired a local trim carpenter, High Class Construction & Remodeling, to complete this scope of work. The inability of MBS to adequately staff this project and the associated change in subcontractor resulted in a 3 week delay on the Development.

Due to the delays described above, we request that Owner be permitted to extend the anticipated placed in service deadline of April 30, 2016 to July 15, 2016. In addition to the placed in service extension request, the owner would like to extend the Cost Certification deadline to August 15, 2016. Owner is working with its investor, lenders, and general contractor to assure these deadlines are met. Recently, the construction risk manager for the equity investor has become involved to review the plan of action for completion and oversee these final steps. We welcome this additional assistance as all parties are committed to conclusion of construction.

An extension fee of \$2500 is being provided with this request. Please feel free to contact me with any questions. We sincerely appreciate your assistance with this matter.

Sincerely,



Cynthia L. Bast

CLB/bsh

4a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
MAY 26, 2016

Presentation, Discussion, and Possible Action regarding an Award of Direct Loan Funds

RECOMMENDED ACTION

WHEREAS, the Department has received a total of 26 applications for Multifamily Direct Loan funds under the 2016-1 Multifamily Direct Loan Notice of Funding Availability (“NOFA”);

WHEREAS, \$1,197,698 in Direct Loan funds under the Deferred Forgivable Loan Set-Aside (“Set-Aside”) have been awarded under the NOFA to date and up to \$1,802,302 remains available under the Set-Aside to award to eligible applications; and

WHEREAS, an Application #16501 requesting \$1,000,000 in Direct Loan funds for Garden Terrace Phase III is a First Priority development that has received complete reviews for compliance with program and underwriting requirements;

NOW, therefore, it is hereby

RESOLVED, that an award of \$1,000,000 in Direct Loan funds from the NOFA for Garden Terrace Phase III is hereby approved in the form presented at this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing; and

FURTHER RESOLVED, that the Board’s approval is conditioned upon satisfaction of all conditions of underwriting and completion of any other reviews required to assure compliance with the applicable rules and requirements

BACKGROUND

On November 12, 2015, the Board approved the 2016-1 Multifamily Direct Loan NOFA with \$23,109,096 of combined HOME and TCAP Repayment funds (up to \$3,000,000 in the Deferred Forgivable Loan Set-Aside, \$4,000,000 in the 4% Housing Tax Credit-Layered New Construction Set Aside, \$3,236,344 in the CHDO Set-Aside, and \$12,872,752 in the General Set-Aside).

At the Board Meeting of February 25, 2016, \$607,698 in Direct Loan funds under the Deferred Forgivable Loan Set-Aside was awarded to application 16405 (New Hope at Harrisburg) under the NOFA. At the Board Meeting of April 28, 2016, \$590,000 in Direct Loan funds under the Deferred Forgivable Loan Set-Aside was awarded to application 16500 (Bluebonnet Studios) under the NOFA. Currently, \$1,802,302 is available in the Deferred Forgivable Set-aside from which to make this award to application #16501.

2016-1 MF Direct Loan Deferred Forgivable Loan Set-Aside: \$3,000,000			
<i>Application Number</i>	<i>Development Name</i>	<i>Awarded/Recommended Amount</i>	<i>Board Approval Date</i>
16405	New Hope at Harrisburg	\$607,698	2/25/16
16500	Bluebonnet Studios	\$590,000	4/28/16
16501	Garden Terrace Phase III	\$1,000,000	5/26/16 – Recommended
TOTAL		\$2,197,698	

Staff is recommending the Board’s approval of Garden Terrace Phase III application (16501) for Direct Loan funds totaling \$1,000,000 under the Deferred Forgivable Loan Set-Aside. The recommended applications and award amounts are outlined in the attached award recommendations log.

Garden Terrace Phase III is the third phase within a 5.77 acre tract of land in South Austin. Phase I was awarded a deferred forgivable HOME loan in the amount of \$1,000,000 by the Department in 2002 for the acquisition and rehabilitation of a nursing home resulting in 85 single room occupancy (“SRO”) units. The Department’s HOME Land Use Restriction Agreement (“LURA”) on Phase I, which restricted all 85 units, will expire in 2023. Phase II – a renovation of approximately 4,400 square feet of unused space within the original building footprint resulting in 15 additional SRO units – was completed in 2008 without Department funds. Phase III will include the new construction of 20 efficiency units, common area spaces, and supportive staff offices on less than an acre of underutilized land. The Direct Loan funds will result in 20 of the 20 units being restricted under a separate LURA. The 20 affordable units in Phase III will target households earning 50% or less of the Area Median Income and rents will be capped at the Low HOME rent. Construction is expected to start within the next eight months.

Staff originally planned to fund this award from TCAP Repayment funds but is also reviewing the possibility of making the award with HOME funds and considering this applicant as a Community Housing Development Organization (“CHDO”) in the federal tracking database. If this is the case, there is a possibility that the HOME funds utilized will need to serve and be awarded from the Persons with Disabilities (“PWD”) portion of the HOME Allocation in accordance with Texas Government Code §2306.111(c)(2), if staff is able to reach the conclusion that this use of HOME funds meets all regulatory and statutory requirements.

As required in section 4 of the 2016-1 NOFA, the Department’s Governing Board must establish a hard closing deadline at the time of award. As such, staff recommends that closing on all sources of funds must occur no later than January 31, 2017. In the event that TCAP Repayment Funds are utilized for this transaction, the Department may require that the development be subject to some or all HOME requirements in 24 CFR Part 92, but in any event, the Development will be subject to all requirements for HOME Match-Eligible units.

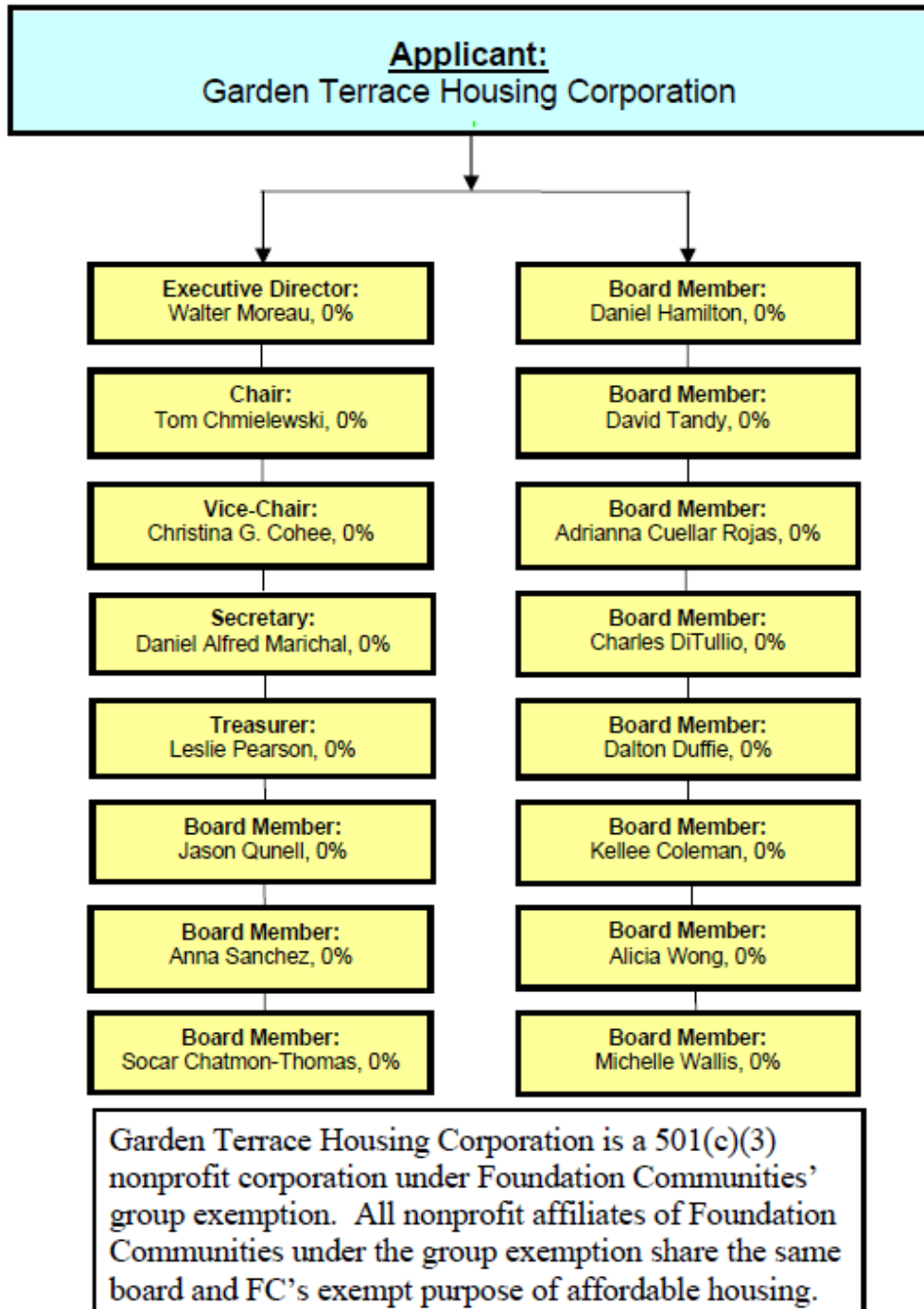
This application has been underwritten and determined to meet the Real Estate Analysis rules and requirements and has received a previous participation review.

The Application and Award Recommendations Log is attached.

Organizational Structure and Previous Participation: The Applicant is Garden Terrace Housing Corporation and includes entities and principals as indicated in the organization chart below. At the time of the Previous Participation Review, the applicant was a Category 3 portfolio because of an uncorrected event of noncompliance. The issue has since been corrected and EARAC recommends approval without further comment.

Public Comment: The Department has received a letter of support from State Representative Donna Howard.

Ownership Chart



REA APPLICATION SUMMARY

PROPERTY IDENTIFICATION	
Application #	16501
Development	Garden Terrace Phase III
City / County	Austin / Travis
Region/Area	7 / Urban
Population	Supportive Housing
Set-Aside	General
Activity	New Construction

RECOMMENDATION						
TDHCA Program	Amount	Rate	Amort	Term	Lien	
Multifamily Direct Loan (Subordinate Deferred Forgivable)	\$1,000,000	0%	NA	\$30/Unit	TBD	

KEY PRINCIPAL(S) / SPONSOR(S)		
Foundation Communities Walter Moreau		
Related-Parties	Contractor -	No
	Seller -	NA

TYPICAL BUILDING ELEVATION/PHOTO

Construction of 20 additional units to an existing 103-unit supportive housing development (for a total of 123 units).

UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	123	30%	30%	45	37%
-	-	40%	40%	-	0%
-	-	50%	50%	78	63%
-	-	60%	60%	-	0%
-	-	MR	MR	-	0%
TOTAL	123	TOTAL	TOTAL	123	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	NA	Expense Ratio	87.2%
Breakeven Occ.	76.5%	Breakeven Rent	\$418
Average Rent	\$506	B/E Rent Margin	\$88
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,728/unit	Controllable	\$3,702/unit

SITE PLAN

PHASE 3 ADDITION UNIT AND BUILDING DATA									
PHASE 3 ADDITION	UNIT TYPE	PER UNIT AREA (SF)	UNIT QUANTITY	TOTAL UNIT AREA (SF)	COMMON AREA (SF)	DISSEMINATION (SF)	OFFICE (SF)	UTILITY ROOM (SF)	TOTAL (SF)
LOWER LEVEL	1-BR/1-BATH	300	10	3,000	100	0	0	0	3,100
LOWER LEVEL	2-BR/2-BATH	400	10	4,000	100	0	0	0	4,100
TOTAL			20	7,000	200	0	0	0	7,200

MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (30% Maximum)			1.2%
Highest Unit Capture Rate	3%	0 BR/30%	10
Dominant Unit Cap. Rate	3%	0 BR/30%	10
Premiums (↑60% Gross)	NA		
Rent Assisted Units	50	41% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	348 SF	Density	21.3/acre
Acquisition	NA		NA
Building Cost	\$215.59/SF	\$12K/unit	\$1,501K
Hard Cost	\$15K/unit		\$1,865K
Total Cost	\$23K/unit		\$2,883K
Developer Fee	\$367K	(50% Deferred)	Paid Year: 2
Contractor Fee	\$305K	30% Boost	NA

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
					TDHCA - MDL	30/	0.00%	\$1,000,000	NA	Foundation Communities, Inc.	\$182,263
					City of Austin	40/	3.00%	\$1,200,000	NA		
					Federal Home Loan Bank	30/	0.00%	\$325,000	NA		
					City of Austin - HOME	20/	3.00%	\$176,070	NA		
TOTAL DEBT (Must Pay)			\$0		CASH FLOW DEBT / GRANTS			\$2,701,070		TOTAL EQUITY SOURCES	\$182,263
										TOTAL DEBT SOURCES	\$2,701,070
										TOTAL CAPITALIZATION	\$2,883,333

CONDITIONS

- Receipt and acceptance by Direct Loan Closing:
Documentation clearing environmental issues contained in the ESA report, specifically:
 - Documentation that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
 - Should any construction activities disrupt or involve portions of the existing building constructed before or during 1978, lead-based paint testing should be conducted. Any lead-based paint found must be remediated in compliance with TCEQ requirements.
- Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	
Expiration Date	
Bond Amount	
BRB Priority	
Expected Close	
Bond Structure	
RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
•	Fund raising track record
•	Underwritten Gross Capture Rate of 2.7% with existing development at 100% occupancy
•	Proven viability of existing development
•	Developer experience
WEAKNESSES/RISKS	
•	If soft debt were to become repayable, deal would be infeasible
•	83% expense ratio
•	pro forma shows negative cash flow beginning in year 20





2016-1 Multifamily Direct Loan Program - Application Log - May 19, 2016
Applications submitted under 2016-1 Multifamily Direct Loan Notice of Funding Availability published in the Texas Register on 12/25/2015

The following data was compiled using information submitted by each applicant. While this data has been reviewed or verified by the Department, errors may still be present. Those reviewing the log are advised to use caution in reaching any definitive conclusions based on this information alone. Applicants are encouraged to review 10 TAC §§11.1(b) and 10.2(b) concerning Due Diligence and Applicant Responsibility. This log will be updated periodically as staff completes application reviews and as more applications are received. Applicants that identify an error in the log should contact Andrew Sinnott at andrew.sinnott@tdhca.state.tx.us as soon as possible. Identification of an error early does not guarantee that the error can be addressed administratively.

Applications sorted by date received.

Deferred Forgivable Loan Total Set Aside Funding Level: **\$3,000,000**

TDHCA Application #	Property Name	Property City	Property County	Region	Housing Activity ¹	Multifamily Direct Loan Request	Underwritten/Recommended Amount	Target Population	Total Units	MF Direct Loan Units	Layering ²	Date Received ³	Comments
16500	Bluebonnett Studios	Austin	Travis	7	NC	\$ 590,000	\$ 590,000	Supportive Housing	107	11	9%	1/4/2016	Recommended for award 4/28/16
16501	Garden Terrace Phase III	Austin	Travis	7	NC	\$ 1,000,000	\$ 1,000,000	Supportive Housing	20	20		1/4/2016	To be recommended for award 5/26/16
16405	New Hope Housing at Harrisburg	Houston	Harris	6	NC	\$ 607,698	\$ 607,698	Supportive Housing	175	11	4%	1/4/2016	Recommended for award 2/25/16
16406	New Hope Housing at Reed	Houston	Harris	6	NC	\$ 660,000		Supportive Housing	187	11	4%	1/4/2016	
16503	Works at Pleasant Valley Phase II	Austin	Travis	7	NC	\$ 850,000		Supportive Housing	29	29		1/5/2016	Direct Loan is only source of Department funding
Total Deferred Forgivable Loan Amount Requested / Recommended						\$ 3,707,698	\$ 2,197,698	Total Units	518	82			

CHDO (HOME funds only) Total Set Aside Funding Level: **\$3,236,344**

TDHCA#	Property Name	Property City	Property County	Region	Housing Activity ¹	Multifamily Direct Loan Request	Underwritten/Recommended Amount	Target Population	Total Units	MF Direct Loan Units	Layering ²	Date Received ³	Comments
16196	Merritt Starlight	Wimberley	Hays	7	NC	\$ 2,000,000		Elderly Limitation	80	34	9%	4/1/2016	
16185	Merritt Heritage	Georgetown	Williamson	7	NC	\$ 2,000,000		Elderly Limitation	244	34	9%	4/1/2016	
16210	Merritt Monument	Midland	Midland	12	NC	\$ 2,000,000		General	104	34	9%	4/1/2016	
16505	Blakemoor Manor	Kaufman	Kaufman	3	NC	\$ 2,000,000		Elderly Limitation	80	34		4/4/2016	Direct Loan is only source of Department funding
Total CHDO Amount Requested / Recommended						\$ 8,000,000		Total Units	508	136			

4% HTC Layered New Construction Total Set Aside Funding Level: **\$4,000,000**

TDHCA#	Property Name	Property City	Property County	Region	Housing Activity ¹	Multifamily Direct Loan Request	Underwritten/Recommended Amount	Target Population	Total Units	MF Direct Loan Units	Layering ²	Date Received ³	Comments
16400	Acme Road Apartments	San Antonio	Bexar	9	NC	\$ 2,000,000		General	324	28	4%	1/19/2016	
16408	Broadmoor Apartments	Fort Worth	Tarrant	3	NC	\$ 2,000,000		General	324	35	4%	2/4/2016	
Total 4% HTC Layered New Construction Amount Requested / Recommended						\$ 4,000,000		Total Units	648	63			

General Total Set Aside Funding Level: **\$12,872,752**

TDHCA#	Property Name	Property City	Property County	Region	Housing Activity ¹	Multifamily Direct Loan Request	Underwritten/Recommended Amount	Target Population	Total Units	MF Direct Loan Units	Layering ²	Date Received ³	Comments
16403	Cross Creek Apartments	Austin	Travis	7	R	\$ 1,000,000		General	200	20	4%	2/9/2016	
16502	Freedoms Path at Kerrville	Kerrville	Kerr	9	NC	\$ 980,000		Supportive Housing	49	13	9%	3/4/2016	Previously received 9% allocation for application #13167
16504	Gaston Place Accessible Apartments	Austin	Travis	7	NC	\$ 1,050,000		General	27	27		3/30/2016	Direct Loan is only source of Department funding
16108	Timber Ridge Apartments	Chandler	Henderson	4	R	\$ 500,000		Elderly Preference	44	13	9%	4/1/2016	
16113	The Village at Main	Bullard	Smith	4	R	\$ 500,000		General	24	7	9%	4/1/2016	
16116	The Cottages at Main	Bullard	Smith	4	R	\$ 500,000		Elderly Preference	24	7	9%	4/1/2016	
16213	Villas on Flint	Wolfforth	Lubbock	1	NC	\$ 1,000,000		Elderly Limitation	60	17	9%	4/1/2016	
16319	The Residence at Coulter	Amarillo	Randall	1	NC	\$ 975,000		Elderly Limitation	119	11	9%	4/1/2016	
16322	The Residence at Autumn Sage	Abilene	Taylor	2	NC	\$ 1,025,000		Elderly Limitation	35	11	9%	4/1/2016	
16011	Homestead Prairie Senior Apartments	Ponder	Denton	3	NC	\$ 1,000,000		Elderly Limitation	53	14	9%	4/1/2016	
16260	Churchill at Golden Triangle Community	Fort Worth	Tarrant	3	NC	\$ 1,500,000		General	118	15	9%	4/1/2016	
16184	Reserve at Hagan	Whitehouse	Smith	4	NC	\$ 1,000,000		General	72	9	9%	4/1/2016	
16169	Havens of Hutto	Hutto	Williamson	7	NC	\$ 1,550,000		Elderly Limitation	70	16	9%	4/1/2016	
16115	The Reserve at Dry Creek	Hewitt	McLennan	8	NC	\$ 1,000,000		Elderly Limitation	113	18	9%	4/1/2016	
16164	Saralita Senior Village	Kerrville	Kerr	9	NC	\$ 1,140,000		Elderly Limitation	36	16	9%	4/14/2016	
Total General Amount Requested / Recommended						\$ 14,720,000		Total Units	1,044	214			

1 = Housing Activity: New Construction=NC, Rehabilitation=R

2 = Layering of Other Department Funds: 9%=9% Competitive Tax Credits, 4%=4% Tax Credit Program

3 = Date Received: The date that the application, all required 3rd Party Reports, Application Fees (if applicable), and Certificate of Reservation (if applicable) were received.

4b

**TO BE POSTED NOT LATER THAN THE
THIRD DAY BEFORE THE DATE OF
THE MEETING**